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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
SBARRO, INC., *et al.*,[1]	)	Case No. 11-_____(___)
Debtors.	)	Joint Administration Requested

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING AND TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION LENDERS, (III) SCHEDULING A FINAL HEARING AND (IV) GRANTING RELATED RELIEF

Sbarro, Inc. ("***Sbarro***") and certain of its affiliates, as debtors and debtors in possession (collectively, the "***Debtors***"), file this motion (the "***Motion***") for entry of (a) an interim order (the "***Interim DIP Order***"), substantially in the form attached hereto as **Exhibit A**, (i) authorizing the Debtors, on an interim basis, to (A) obtain postpetition financing on a senior secured, priming,

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sbarro, Inc. (1939); Holdings (3819); Carmela's of Kirkman Operating, LLC (1182); Carmela's of Kirkman LLC (7703); Carmela's, LLC (8088); Corest Management, Inc. (9134); Demefac Leasing Corp. (2379); Larkfield Equipment Corp. (7947); Las Vegas Convention Center LLC (7645); Sbarro America Properties, Inc. (9540); Sbarro America, Inc. (9130); Sbarro Blue Bell Express LLC (1419); Sbarro Commack, Inc. (4007); Sbarro Express LLC (0253); Sbarro New Hyde Park, Inc. (6185); Sbarro of Las Vegas, Inc. (2853); Sbarro of Longwood, LLC (0328); Sbarro of Virginia, Inc. (2309); Sbarro Pennsylvania, Inc. (3530); Sbarro Properties, Inc. (9541); Sbarro Venture, Inc. (3182); Sbarro's of Texas, Inc. (5139); Umberto at the Source, LLC (8024); Umberto Deer Park, LLC (8728); Umberto Hauppauge, LLC (8245); Umberto Hicksville, LLC (0989); Umberto Huntington, LLC (8890); and Umberto White Plains, LLC (8159). The Debtors' service address is: 401 Broadhollow Road, Melville, New York 11747.

superpriority basis, and (B) use the Cash Collateral (as defined below), (ii) granting adequate protection to the Pre-Petition Lenders (as defined below) for the priming of their existing liens and the Debtors' use of the Cash Collateral, (iii) authorizing Cantor Fitzgerald Securities ("***CFS***") to succeed Bank of America, N.A. ("***BofA***") as Pre-Petition First Lien Agent (as defined below), (iv) scheduling a hearing to consider entry of the Final DIP Order (as defined below) and (v) granting related relief; and (b) a final order (the "***Final DIP Order***" and, together with the Interim DIP Order, the "***DIP Orders***") authorizing the relief granted in the Interim DIP Order on a permanent basis as described in this Motion. In support of the Motion, the Debtors submit the *Declaration of Nicholas McGrane, Chief Executive Officer of Sbarro, Inc., (I) In Support of Debtors' Chapter 11 Petitions and First Day Pleadings and (II) Pursuant to Local Bankruptcy Rule 1007-2* (the "***First Day Declaration***"), which has been filed contemporaneously herewith and is incorporated herein by reference and the declaration of Neil Augustine, a Senior Managing Director of Rothschild Inc. ("***Rothschild***"), the Debtors' proposed investment banker in these chapter 11 cases, also filed contemporaneously herewith and incorporated herein (the "***Augustine Declaration***"). In further support of the Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT[2]

The Debtors require immediate access to their proposed postpetition financing to ensure continued uninterrupted operations during these cases and assure stakeholders of their ability to expeditiously implement a pre-arranged restructuring. Without access to postpetition financing, the Debtors are likely not to have sufficient cash on hand to maintain uninterrupted operations during chapter 11. In light of lower than expected performance during the fourth quarter of 2010

[2] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed to them elsewhere in the Motion.

(a traditional high sales period) and higher restructuring and debt service costs, the Debtors were not able to build up sufficient cash reserves to meet their working capital and operational needs without obtaining additional financing.

Faced with these circumstances, the Debtors began discussions with key stakeholders with the aim of reducing leverage and boosting liquidity. The Debtors made significant progress, obtaining consent from their second lien lender and a majority of their bondholders, for a pre-arranged chapter 11 restructuring that the Debtors believe will allow them to right-size their capital structure and position them for long-term growth and profitability. To ensure they maintain adequate liquidity for their operations, the Debtors and their advisors also have engaged in discussions with several potential debtor in possession lenders, including their existing Pre-Petition First Lien Lenders. Ultimately, the Pre-Petition First Lien Lenders were the only parties capable of providing the Debtors with up to $35 million of additional liquidity on reasonable terms and on a fully consensual basis, which will facilitate the Debtors' goal of emerging from chapter 11 expeditiously.

Toward that end, the Debtors seek authorization to enter into a $35 million delayed-draw term loan facility with certain Pre-Petition First Lien Lenders on a superpriority, administrative claim and first priority priming lien basis, as more fully described herein. The Debtors are requesting authority to access $16.5 million of the DIP Facility on an interim basis pursuant to the Interim DIP Order. In addition, the Debtors are seeking authority to use the Cash Collateral of their existing lenders to support the Debtors' working capital needs throughout these cases. As discussed below, the Debtors' existing secured lenders have consented to the Debtors' continued use of Cash Collateral.

Notably, the approval of the DIP Facility has the full support of the Debtors' key stakeholders. Indeed, to ensure the continued pre-arranged nature of these cases, the Debtors are required to obtain approval of the DIP Facility under the plan support agreement with their Pre-Petition Second Lien Lenders and certain Noteholders.

The Debtors are seeking DIP Facility approval and authorization to use cash collateral use to continue normal business operations in chapter 11, maintain vendor and supplier relationships, pay employees who will be instrumental in implementing restructuring initiatives, and satisfy other working capital and operational requirements. Satisfaction of these key obligations is necessary to preserve and maintain the going-concern value of the enterprise and effectuate a successful reorganization. Accordingly, the Debtors respectfully submit that the DIP Facility should be approved.[3]

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1408.

3. The statutory bases for the relief requested herein are sections 105(a), 361, 362, 363(c), 363(e), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code (the "***Bankruptcy Code***," 11 U.S.C.§§ 101-1532), rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), and rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "***Local Bankruptcy Rules***").

[3] The Debtors have prepared a postpetition financing budget (the "***DIP Budget***"). As of the Petition Date, the Debtors, in consultation with their advisors, were finalizing the DIP Budget and will file a final DIP Budget prior to the hearing on this Motion.

RELIEF REQUESTED

4. By this Motion, the Debtors request entry of the following two DIP Orders, which, collectively, will provide the Debtors critical and necessary access to a senior secured superpriority debtor in possession term loan facility in an aggregate principal amount of $35 million (the "***DIP Facility***"):

- The ***Interim DIP Order***, among other things, providing the Debtors on an interim basis:
    - Cash Collateral: authority to use the Debtors' cash that constitutes Pre-Petition Lenders' "cash collateral," as that term is defined in section 363(a) of the Bankruptcy Code (the "***Cash Collateral***"); **(Int. DIP Order at ¶ 11)**;
    - DIP Facility: authority to obtain postpetition term loans in a principal amount not to exceed $16.5 million on an interim basis and other financial accommodations, pursuant to the terms and conditions of the debtor in possession financing agreement (the "***DIP Credit Agreement***") by and among Sbarro, Inc., as borrower, the other Debtors, as guarantors, Cantor Fitzgerald Securities, as lead arranger and administrative agent, (the "***DIP Agent***") and the lenders from time to time party thereto (collectively, the "***DIP Lenders***"), substantially in the form of the DIP Credit Agreement attached as **Exhibit B** hereto;[4] **(Int. DIP Order at ¶ 5)**;
    - DIP Documents: authority to execute and deliver the DIP Credit Agreement and all agreements, documents and instruments contemplated by each (collectively, the "***DIP Documents***"), and to take all actions necessary, appropriate or required to comply with the Debtors' obligations under the DIP Documents and under the DIP Orders; **(Int. DIP Order at ¶ 5)**;
    - DIP Liens and Claims: authority to grant the DIP Agent, for its own benefit and the benefit of the DIP Lenders, senior, first priority, priming DIP Liens on the Collateral securing, and the superpriority claims in respect of, the obligations under the DIP Facility; **(Int. DIP Order at ¶¶ 6-7)**;
    - Adequate Protection: approval of the Adequate Protection Liens and other Adequate Protection Obligations (in each case, as defined below) to be provided to the Pre-Petition Agents (as defined below), on behalf of themselves and the other Pre-Petition Lenders, to protect the Pre-Petition Lenders' interests in the Cash Collateral, as well as to compensate for any decline in, or diminution of, the value of the Pre-Petition Lenders' liens or security interests under the Pre-Petition Facilities, and approval of

[4] As of the Petition Date, the Debtors had not yet collected all signature pages to the DIP Credit Agreement. Once all signature pages have been obtained, the Debtors will file a fully executed version of the DIP Credit Agreement on the Court's docket.

the Adequate Protection Payments (as defined below) to be provided to the Pre-Petition First Lien Agent; **(Int. DIP Order at ¶ 13)**;

- Successor Agent: authorization for CFS to succeed BofA as Pre-Petition First Lien Agent.

- Final Hearing: a date for a hearing on the Motion to consider entry of the Final DIP Order, to be held no sooner than 15 days after the date of this Motion, and no later than 40 days after entry of the Interim DIP Order **(Int. DIP Order at ¶ 24)**; and

- The ***Final DIP Order***, among other things, authorizing the relief granted in the Interim DIP Order on a permanent basis, and providing the Debtors authority to obtain postpetition loans and other financial accommodations under the DIP Facility in a principal amount not to exceed $35 million.

CONCISE STATEMENT PURSUANT TO LOCAL BANKRUPTCY RULE 4001-2

5. Pursuant to Bankruptcy Rules 4001(b), (c) and (d), and Local Bankruptcy Rule 4001-2, the following is a concise statement and summary of the proposed material terms of the DIP Documents and DIP Orders:[5]

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
DIP Credit Agreement Parties *Fed. R. Bankr. P. 4001(c)(1)(B)*	**Debtor Parties**: Borrower: Sbarro, Inc. (the "***Borrower***"). **(DIP Agmt., 1st Recital)**. Guarantors: Holdings ("***Holdings***") and each of Borrower's direct and indirect domestic subsidiaries (the "***Guarantors***," and with the Borrower, collectively, the "***Loan Parties***"). **(DIP Agmt. § 6.12)** **Lending Parties**: DIP Agent: Cantor Fitzgerald Securities. **(DIP Agmt., 1st Recital)**. DIP Lenders: Banks, financial institutions and other lenders under the Pre-Petition First Lien Facility that are parties to the DIP Credit Agreement.

[5] Capitalized terms used in this statement but not otherwise defined herein shall have the meanings ascribed to such terms in the DIP Documents or DIP Orders, as applicable. This statement is qualified in its entirety by reference to the applicable provisions of the DIP Documents or the DIP Orders. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Documents or the DIP Orders, the provisions of the DIP Documents or the DIP Orders, as applicable, shall control.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	(DIP Agmt., 1st Recital).
Maturity *Fed. R. Bankr. P. 4001(c)(1)(B)*	Stated Maturity Date: Six months after the closing of the DIP Facility (the "***Stated Maturity Date***"). At the Borrower's option, the DIP facility may be extended for an additional three months upon satisfaction of certain conditions. **(DIP Agmt. §§ 1.01 & 2.15)**.
Termination *Local Bankruptcy Rule 4001-2(a)(10)* *Fed. R. Bankr. P. 4001(c)(1)(B)*	The DIP Facility terminates on the earlier of the Stated Maturity Date, the acceleration of the loans under the DIP Facility pursuant to the terms of the DIP Credit Agreement, the consummation of a sale of all or substantially all of the Borrower's and its subsidiaries assets under section 363 of the Bankruptcy Code, the effective date of a chapter 11 plan of reorganization with respect to any Loan Party and 40 days after entry of the Interim DIP Order unless the Final DIP Order has been entered by that time. **(DIP Agmt. § 1.01)**. The Debtors' right to use Cash Collateral shall expire on the Stated Maturity Date. **(Int. DIP Order ¶ 11)**.
Purpose *Fed. R. Bankr. P. 4001(c)(1)(B)*	**DIP Facility**. The proceeds of the DIP Facility shall be used for (a) working capital, capital expenditures and general corporate purposes of the Loan Parties, including, without limitation, the payment of (i) fees, costs and expenses incurred in the administration of the chapter 11 cases, (ii) fees, costs and expenses incurred by the Loan Parties in connection with the DIP Facility and (iii) such pre-petition obligations as the Court shall approve and (b) for other lawful corporate purposes. (**Int. DIP Ord. ¶ 5)**; **(DIP Agmt. § 5.18)**. **Cash Collateral**. The Debtors are authorized to use the Cash Collateral for working capital and general corporate purposes. (**Int. DIP Ord. ¶¶ 4 & 19)**
Interest Rates *Fed. R. Bankr. P. 4001(c)(1)(B)*	**Interest Rate**. Borrower may elect either (a) LIBOR plus 7.00% (with a LIBOR floor of 1.75%) or (b) Base Rate plus 6.00%. **(DIP Agmt. § 2.06)**. **Default Rate.** Interest rate equal to (a) the Base Rate plus (b) the Applicable Margin applicable to Base Rate Loans (*i.e.*, 6.00%) plus (c) 2.00% per annum; *provided, however*, that with respect to a Eurodollar Loan, the default rate shall be an interest rate equal to the interest rate (including any Applicable Margin, *i.e.*, 7.00%) otherwise applicable to such Loan plus 2.00% per annum. **(DIP Agmt. §§ 1.01 & 2.06(c))**.
DIP Commitments *Local Bankruptcy Rule 4001-2(a)(1);* *Fed. R. Bankr. P. 4001(c)(1)(B)*	**DIP Credit Agreement**. Total aggregate term loan commitment of $35 million to be disbursed as: • Initial DIP Loan: $16.5 million (or lesser amount approved by the Court and set forth in the Interim DIP order). **(DIP Agmt. § 2.01)** • Final DIP Loan: $35 million (less the amount of the initial DIP Loan actually borrowed).

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	Commitments in an aggregate principal amount of $3.5 million shall be drawn by the Borrower within one business day following the entry of the Final DIP Order. After such date, the remaining commitments in an aggregate amount of $15 million shall be available to the Borrower until the Termination Date at the option of the Borrower in one or two draws as delayed-draw term loans. **(DIP Agmt. § 2.01)**
Conditions *Local Bankruptcy Rule 4001-2(a)(2); Local Bankruptcy Rule 4001-2(h); Fed. R. Bankr. P. 4001(c)(1)(B)*	**Closing Conditions.** Usual and customary conditions to effectiveness of the DIP Facility, including DIP Agent's satisfaction with Loan Parties' cash management arrangements, monthly financial forecasts and the DIP Budget, no events reasonably expected to cause a material adverse change, entry of an Interim DIP Order satisfactory to the DIP Agent, stipulation to the validity of prepetition liens, no appointment of trustee or examiner, execution of the DIP Documents, payment of costs and fees, and accuracy of representations and warranties. **(DIP Agmt. § 4.01)** **Funding Conditions.** Each extension of credit is subject to usual and customary funding conditions, including delivery of notice, accuracy of representations, no defaults or events of default, and that usage of the term loan commitments under the DIP Facility will not exceed the aggregate amount authorized by the applicable DIP Order then in effect. **(DIP Agmt. §§ 4.01-4.04)**
Fees *Local Bankruptcy Rule 4001-2(a)(3); Fed. R. Bankr. P. 4001(c)(1)(B)*	**Unused Commitment.** 0.75% on the unused portion of the outstanding term loan commitments under the DIP Facility. **(DIP Agmt. § 2.11(a))**. **Underwriting Fee.** 2.00% of the total amount of the DIP Facility commitments, payable on the date of closing of the DIP Facility ratably to each DIP Lender on the basis of its respective commitments. **Upfront Fees.** The term loans under the DIP Facility will be net funded with an original issue discount of 1.00% of the aggregate principal amount thereof. Such original issue discount may take the form of an upfront fee.
Liens and Priorities *Local Bankruptcy Rule 4001-2(a)(4); Fed. R. Bankr. P. 4001(c)(1)(B)*	**DIP Liens**. Subject to the Carve-Out, the obligations of each Loan Party under the DIP Facility (including all loans and obligations with respect to letters of credit), shall, subject to the Carve-Out, be secured by the following liens (the "***DIP Liens***"): a. **First Priority Liens**. Pursuant to Section 364(c)(2) of the Bankruptcy Code, the DIP Facility will be secured by a perfected first priority security interest and lien on all now owned or hereafter acquired assets and property of such Loan Party (including, without limitation, inventory, accounts receivable, property, plant, equipment, rights under leases and other contracts, patents, copyrights, trademarks, tradenames and other intellectual property and capital stock of subsidiaries), and the proceeds thereof subject to customary exceptions to be agreed (the "***Collateral***"), to the extent that such Collateral is not subject to (A) valid, perfected and

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	non-avoidable liens as of the Petition Date or (B) claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code (collectively "***Avoidance Actions***") (it being understood that notwithstanding such exclusion of Avoidance Actions, upon entry of the Final Order, to the extent approved by the Court, such lien shall attach to any proceeds of successful Avoidance Actions). b. **Junior Priority Liens**. Pursuant to Section 364(c)(3) of the Bankruptcy Code, the DIP Facility will be secured by a perfected junior security interest and lien on the Collateral of such Loan Party, to the extent that such Collateral is subject to valid, perfected and unavoidable liens that were in existence immediately prior to the Petition Date, or to valid and unavoidable liens that were in existence immediately prior to the Petition Date that were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (other than Collateral that is subject to the existing liens that secure obligations of such Loan Party under either the First Lien Credit Agreement or the Second Lien Credit Agreement, which existing liens will be primed by the liens described below). c. **Priming Liens.** Pursuant to Section 364(d)(1) of the Bankruptcy Code, the DIP Facility will be secured by a perfected first priority priming security interest and lien on the Collateral of such Loan Party, to the extent that such Collateral is subject to the existing liens that secure the obligations of such Loan Party under the Pre-Petition First Lien Facility or the Pre-Petition Second Lien Facility or to a valid and enforceable right of setoff by any Pre-Petition Lender. The priming liens (x) are senior in all respects to the interests in such property of any Pre-Petition Lender and (y) also prime any liens granted after the Petition Date to provide adequate protection in respect of any of the liens primed under the DIP Facility. The primed liens shall be primed by and made subject and subordinate to the perfected first priority senior priming liens to be granted to the DIP Agent, which senior priming liens in favor of the DIP Agent shall also prime any liens granted after the commencement of these chapter 11 cases to provide adequate protection in respect of any of the primed liens, but shall not prime liens, if any, to which the primed liens are subject at the time of the commencement of the chapter 11 cases. **(Int. DIP Ord. ¶¶ 12 & 13) (DIP Agmt. § 2.16)** **DIP Facility Priorities**. Pursuant to Section 364(c)(1) of the Bankruptcy Code, the DIP Facility will be entitled to superpriority administrative expense claim status in the chapter 11 case of such Loan Party. **(Int. DIP Ord. ¶¶ 12 & 13) (DIP Agmt. § 2.16)** **Adequate Protection**. The Pre-Petition Agents and the Pre-Petition Lenders are entitled to adequate protection of their interests in the Pre-Petition Collateral, including the Cash Collateral, for diminution in value of the collateral securing the obligations under the Pre-Petition Facilities, as well as for any decline in, or diminution of, the value of the Pre-Petition Lenders' liens or security interests under the Pre-Petition Facilities, as provided under section 507(b) of the Bankruptcy Code, pursuant to sections 361, 363(c)(2) and 364(d)(1) of the Bankruptcy Code, in each case subject and subordinate to the Carve Out, as follows:

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	a. **Pre-Petition First Lien Lenders.** Pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, the Finance Parties (as defined pursuant to the Pre-Petition First Lien Facility) whose liens will be primed as described above, and whose Cash Collateral will be authorized for use by the Loan Parties, will be entitled to receive an adequate protection package, subject to usual and customary conditions. Such adequate protection package will include, among other things: i. subject to the Carve-Out, a lien junior to the liens securing the DIP Facility on all of the collateral securing the DIP Facility (such lien to secure all obligations under the Pre-Petition First Lien Facility) (the "***First Lien Adequate Protection Liens***"); ii. a superpriority claim, subject to the Carve-Out, pursuant to section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and DIP Lenders; iii. payment of current cash interest at the contractual default rate in respect of the First Lien Credit Agreement; iv. payment of all fees and expenses of the Pre-Petition First Lien Agent in accordance with the terms of the Interim and Final DIP Orders (clauses (ii) and (iii) being the "***Adequate Protection Payments***"); v. all written information required to be provided to the DIP Agent or DIP Lenders; vi. after the commitments under the DIP Facility have been terminated and the DIP Facility has been repaid in full and/or cash collateralized as specified in the loan documentation, application of proceeds from asset sales first to repayment of unpaid obligations under the Pre-Petition First Lien Facility until such obligations are paid in full and second to the repayment of unpaid obligations under the Pre-Petition Second Lien Facility; vii. compliance with certain covenants to be included in the DIP Credit Agreement in respect of the achievement of milestones relating to confirmation of a chapter 11 plan of reorganization; and viii. the usual and customary claims, priorities and other protections provided to pre-petition secured creditors in situations of this kind (collectively, the "***Senior Adequate Protection Obligations***"). b. **Pre-Petition Second Lien Lenders.** Pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code and in accordance with Section 6.2 of the Intercreditor Agreement between the Pre-Petition First Lien Lenders and the Pre-Petition Second Lien Lenders (the "***Intercreditor Agreement***"), which is attached hereto as **Exhibit C** the Pre-Petition Second Lien Lenders whose liens will be primed as described above, and

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	whose cash collateral will be authorized for use by the Loan Parties, will be entitled to receive as adequate protection liens on all of the collateral securing the obligations under the DIP Facility that are junior to the First Lien Adequate Protection Liens (the "***Second Lien Adequate Protection Liens***" and, collectively with the First Lien Adequate Protection Liens, the "***Adequate Protection Liens***"). In accordance with the Intercreditor Agreement, such liens shall be the only adequate protection received by the Pre-Petition Second Lien Lenders (collectively, the "***Junior Adequate Protection Obligations***," and, collectively with the Senior Adequate Protection Obligations, the "***Adequate Protection Obligations***").[6] Notwithstanding the terms of the Intercreditor Agreement, the Debtors have agreed to provide to the Pre-Petition Second Lien Lenders (and the Pre-Petition First Lien Lenders have consented to the provision of) all written information required to be provided to the Pre-Petition First Lien Lenders, DIP Agent or DIP Lenders. **(Int. DIP Ord. ¶¶ 12 & 13)**
Carve-Out *Local Bankruptcy Rule 4001-2(a)(5)* *Local Bankruptcy Rule 4001-2(d)*	As set forth in the Interim DIP Order, customary for postpetition financings of this size, providing for a carve-out (the "***Carve Out***") from pre- and postpetition claims, liens and interests for: • fees to the U.S. Trustee; • any chapter 11 trustee fees subject to a $100,000 cap; • all allowed and unpaid Professional Fees incurred on or prior to the business day immediately following an Event of Default and delivery of a notice of such default by the DIP Agent (the "***Carve Out Notice***") to the U.S. Trustee, counsel to the Debtors, counsel to Pre-Petition First Lien Lenders and counsel to the Official Committee of Unsecured Creditors (the "***Creditors' Committee***"); and • all fees incurred subsequent to such business day by any professionals retained by the Debtors or any statutory committees appointed in the chapter 11 cases (each a "***Committee***") not to exceed $4.0 million in the aggregate. The Debtors shall fund a segregate account (the "***Carve Out Account***") not subject to control, foreclosure or sweeping by the DIP Agent or DIP Lenders immediately upon delivery of a Carve Out Notice. (**Int. DIP Ord. ¶ 6(b)) (DIP Agmt. § 2.16(c))**
Covenants *Local Bankruptcy Rule 4001-2(a)(8); Fed. R. Bankr. P. 4001(c)(1)(B)*	**Affirmative Covenants**. Usual and customary for financings of this type, and substantially identical to the covenants included in the Pre-Petition First Lien Facility (subject to certain additional changes and modifications) including delivery of financial statements, cash flow forecasts, commencing with the last business day of the second calendar week ending after closing of the DIP Facility, a variance report setting forth cash receipts and expenditures and variance from the DIP Budget, use of reasonable efforts to cause the DIP Facility to be rated by Moody's and S&P, maintenance of

[6] Specifically, the Interecreditor Agreement restricts the adequate protection that Pre-Petition Second Lien Lenders may receive in any insolvency proceeding of the Debtors to junior liens that are co-extensive but subordinated to any First Lien Adequate Protection Liens. See Intercreditor Agreement §§ 6.1 & 6.2.

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	existence, legal compliance, properties, insurance, and books and records, and inspection rights. **(DIP Agmt, Art. 6)** **Negative Covenants**. Usual and customary for financings of this type, and substantially the same as set forth in the Pre-Petition First Lien Facility (subject to certain additional changes and modifications) including limitations on indebtedness, liens, nature of business, consolidation and mergers, asset sales, investments and acquisitions, prepayment of indebtedness (except as provided in "first day" or other Court orders), transactions with affiliates, sale and leaseback transactions, accounting changes, and creating or permitting other superpriority claims to exist. **(DIP Agmt, Art. 7)**. **Financial Covenants.** Beginning with the fifth week subsequent to closing of the DIP Facility and continuing for each week thereafter, and as measured on a cumulative basis from the closing, the Borrower's net cash flow (excluding financing costs, court approved utility deposits, PACA claim payments, lien claims payments, capital expenditures, and professional fees and expenses) shall not have a negative variance of greater than (a) with respect to testing in the fifth, sixth and seventh weeks, the greater of (i) 20% of the projected amounts set forth in the initial DIP Budget for prior periods and (ii) $5.0 million, (b) with respect to testing in the eighth, ninth, tenth, eleventh and twelfth weeks, the greater of (i) 15% of the projected amounts set forth in the initial DIP Budget for prior periods and (ii) $5.0 million and (c) with respect to testing in the 13th week and each week thereafter, the greater of (i) 10% of the projected amounts set forth in the applicable DIP Budget and (ii) $5.0 million. **(DIP Agmt. § 7.16)** **Capital Expenditure Covenants.** Maximum monthly capital expenditures in accordance with the DIP Agreement, including a month-to-month carryover; *provided* that not more than $8.6 million of capital expenditures may be made during the six month period following the Petition Date. **(DIP Agmt. § 7.16)**
Limitations on Use of DIP Facility and Cash Collateral *Fed. R. Bankr. P. 4001-2(a)(9)*	No portion of the Carve-Out, any Cash Collateral or proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, (a) any of the DIP Lenders' liens or claims, or the initiation or prosecution of any claim or action against any DIP Lender, including any claim under chapter 5 of the Bankruptcy Code, in respect of the Pre-Petition First Lien Facility and (b) any claims or causes of actions against the Pre-Petition First Lien Lenders, their respective advisors, agents and sub-agents, including formal discovery proceedings in anticipation thereof, and/or challenging any lien of the Pre-Petition First Lien Lenders; provided, that, in each case such limitations shall not apply to any investigation by a Committee in an aggregate amount for all Committees not to exceed $50,000. **(Int. DIP Ord. ¶ 18) (DIP Agmt. § 2.16(c)))**
Events of Default *Local Bankruptcy Rule 4001-2(a)(10); Fed. R. Bankr. P. 4001(c)(1)(B)*	Usual and customary for financings of this type, and substantially identical to the events of default included in the Pre-Petition First Lien Facility (subject to certain additional changes and modifications), including non-payment of principal, interest and fees, defaults under covenants (provided that breaches of the cash flow variance test shall not be an Event of Default unless such breach occurs for three consecutive weeks),

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	breaches of representations and warranties, judgment defaults, cross defaults, failure to comply with ERISA rules and regulations, appointment of bankruptcy trustee or examiner, modification to DIP Orders, change of control, dismissal or conversion of the bankruptcy cases, lifting of stay as to material assets of the Debtors, entry of an order granting superpriority claims to other creditors, non-permitted prepetition debt payments, failure to comply with bankruptcy milestones, invalidity of DIP financing documentation, timing for the filing and confirmation of a bankruptcy plan (each, an "***Event of Default***"). **(DIP Agmt. § 8.01)**
Change of Control *Local Bankruptcy Rule 4001-2(a)(11)*	"Change of control" is included as an event of default under the DIP Credit Agreement. **(DIP Agmt. § 8.01(h))**
Milestones *Local Bankruptcy Rule 4001-2(a)(12); Fed. R. Bankr. P. 4001(c)(1)(B)(v-vi)*	The DIP Credit Agreement contains the following deadlines relating to the filing of the chapter 11 plan and disclosure statement, including: • filing of plan of reorganization within 60 days of the Petition Date that provides for full payment of administrative claims (including those arising under the DIP Facility) (the "***Acceptable Plan***"); • entry of order by the Court approving the adequacy of the Debtors' disclosure statement for the Acceptable Plan within 90 days after the Petition Date; • entry of order by the Court within 170 days of the Petition Date confirming the Acceptable Plan, and • consummation of such plan within 180 days of the Petition Date (or, if earlier, within 30 days after entry of an order confirming the Acceptable Plan). **(DIP Agmt. § 8.01(r)-(u)) (Int. DIP Ord. ¶ 20)**
Repayment *Local Bankruptcy Rule 4001-2(a)(13)*	**Voluntary Prepayment.** Borrower has right to prepay loans without penalty, as long as each partial prepayment is in a minimum amount of $500,000 or a whole multiple of $100,000 in excess thereof; *provided however* that Borrow must compensate any DIP Lender and hold such lender harmless from loss, cost or expense incurred by such lender as a result of a prepayment of any loan other than a Base Rate Loan. **(DIP Agmt. §§ 2.09(a) & 3.05)** **Mandatory Repayment**. 100% of the net cash proceeds of any Prepayment Event (as defined below) shall be applied as follows: first to the prepayment of any outstanding term loans under the DIP Facility and second, subject to the Carve-Out and the payment in full of the Professional Fees, such proceeds shall be deposited to an escrow account to be used solely to repay the indebtedness outstanding under the Pre-Petition First Lien Facility (and, after such indebtedness shall have repaid in full, to repay the Indebtedness outstanding under the Pre-Petition Second Lien Facility). A "***Prepayment Event***" means (a) any voluntary or involuntary asset sale or other disposition of assets by Holdings, the Borrower or any of its subsidiaries (other than (i) sales of inventory and equipment in the ordinary course of business, (ii) dispositions of obsolete or surplus equipment, (iii) the consummation of a sale of substantially all of Borrower's and its subsidiaries assets under section 363 of the Bankruptcy Code and (iv) other customary exceptions to be agreed), (b) any casualty or other insured damage

MATERIAL TERMS OF THE PROPOSED POSTPETITION FINANCING	
	to any property of Holdings, the Borrower or any of its subsidiaries, or any taking of property pursuant to the power of eminent domain or condemnation, (b) the issuance of any equity securities or the receipt of any capital contribution by Holdings, the Borrower or any of its subsidiaries (other than intercompany investments) or (d) the incurrence of any indebtedness by Holdings, the Borrower or any of its subsidiaries (excluding indebtedness otherwise permitted to be incurred pursuant to the terms of the DIP Facility) , in each case subject to certain exceptions to be agreed upon, including reinvestment rights in respect of insurance proceeds substantially the same as those set forth in the Pre-Petition First Lien Facility. **(DIP Agmt. § 2.09(b))**
Joint Liability *Local Bankruptcy Rule 4001-2(a)(14);* *Local Bankruptcy Rule 4001-2(e)*	All obligations of the Borrower are guaranteed, on a joint and several basis, by Holdings and each of Borrower's direct and indirect domestic subsidiaries. **(DIP Agmt, Ex. F)**
Acknowledgements *Local Bankruptcy Rule 4001-2(f)* *Fed. R. Bankr. P. 4001(c)(1)(B)(iii);*	The Debtors make certain customary admissions and stipulations with respect to the aggregate amount of prepetition indebtedness owing to the Pre-Petition Lenders and the validity, enforceability and priority of the liens and security interests granted to the Pre-Petition Agents to secure such indebtedness. **(Int. DIP Ord. ¶ 3).**
Automatic Stay *Fed. R. Bankr. P. 4001(c)(1)(B)(iv)*	The Interim DIP Order provides for lifting of automatic stay to allow DIP Agent and DIP Lenders to exercise (a) upon the occurrence of an Event of Default and seven days' prior written notice, all rights and remedies under the DIP Credit Agreement (other than rights and remedies against the Collateral) and (b) upon the occurrence and during the continuance of an Event of Default, and seven days' prior written notice, all rights and remedies against the Collateral. **(Int. DIP Ord. ¶ 8(b)) (DIP Agmt. § 8.02)**
Waivers and Consents *Fed. R. Bankr. P. 4001(c)(1)(B)(v);* *Fed. R. Bankr. P. 4001(c)(1)(B)(vii-x)*	Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms. No obligation, payment, transfer or grant of security under the DIP Documents or the Interim DIP Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim. **(Int. DIP Ord. ¶ 5(c)).** **Indemnification**. Usual and customary for financings of this type, and substantially the same as set forth in the Pre-Petition First Lien Facility, including fees, charges and disbursements of counsel to the Pre-Petition First Lien Agent. **(DIP Agmt. § 10.04(b))**

KEY PROVISIONS

6. As a condition to obtaining the proposed financing, the DIP Lenders have required and the Debtors have agreed to certain provisions that may be considered key provisions to be highlighted to the Court. These provisions include the following:

- Proceeds of Avoidance Actions. The superpriority claims shall be chargeable against and, subject to entry of the Final DIP Order, the DIP Liens shall include liens on the proceeds of the Debtors' claims and causes of action (but not on the actual claims and causes of action) arising under section 502(d), 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code. **(Int. DIP Ord. ¶ 7(a))**

- Automatic Stay Relief. The Interim DIP Order lifts the automatic stay to allow on seven days prior notice to the Debtors (with copy to the US Trustee and Creditors' Committee) (a) exercise of rights and remedies (including termination) under the DIP Credit Agreement (other than rights and remedies against the Collateral) upon an Event of Default and (b) during the continuance of an Event of Default, exercise of rights and remedies against the Collateral. **(Int. DIP Ord. ¶ 8(b)) (DIP Agmt. § 8.02)**

- Carve Out. The DIP Facility provides for a Carve-Out of any chapter 11 trustee and Professional Fees. The Carve-Out is subject to a $100,000 cap in the case of a chapter 11 trustee and a cap of $4,000,000 with respect to fees incurred by the Debtors' professionals at any time after the first business day after the occurrence and during the continuance of an Event of Default and delivery of notice thereof by the DIP Agent. **(Int. DIP Ord. ¶ 6(b))**. The Carve-Out does not provide for disparate treatment of the Debtors' and the Creditors' Committee's professionals and therefore is in compliance with Local Bankruptcy Rule 4001-2(d).

- 506(c) Waiver. Subject to the entry of the Final DIP Order, no costs or expenses of administration shall be surcharged or otherwise imposed against the DIP Lenders' collateral under section 506(c) of the Bankruptcy Code or otherwise. **(Int. DIP Ord. ¶ 9)**.

- Fees. The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lenders in exchange for their making financing available under the DIP Facility, as set forth in greater detail in paragraphs 50 through 52, below. **(Int. DIP Ord. ¶ 5)**

- Committee Investigation. The Debtors have agreed that the limitations on use of cash collateral or proceeds of the DIP Facility or Carve-Out to fund challenges to the DIP Lenders' liens or claims shall not apply to Committee investigations in an aggregate amount not to exceed $50,000. The Interim DIP Order also provides that the Debtors' stipulations as to prepetition liens shall be binding upon all parties, including the Creditors' Committee, unless a party in interest has filed an adversary

proceeding or contested matter within 60 days from the date of entry of the Final DIP Order in accordance with Local Rule 4001-2(f). **(Int. DIP Ord. ¶ 18).**

- Adequacy of the Budget (Pursuant to Local Bankruptcy Rule 4001-2(h)). The Borrower is required to deliver to the DIP Lenders a budget for the 13 weeks commencing with the week that includes the Petition Date. Such budget will be updated and extended in the following months. **(DIP Agmt. §§ 1.01 & 6.01(d))** ***The Debtors have reason to believe that the DIP Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the financing or the budget.***

BACKGROUND[7]

7. On the date hereof (the "***Petition Date***"), each of the Debtors filed a petition with this Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of the Motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

A. Pre-Petition Capital Structure.

8. As of the Petition Date, the Debtors' principal capital structure consists of secured revolving and term loan facilities, senior unsecured notes and equity. Specifically, the Debtors have outstanding debt for borrowed money in the aggregate principal amount of approximately $368.2 million, consisting primarily of: (a) approximately $172.7 million in secured debt under their first lien senior secured credit facility, plus $3.5 million in letters of credit; (b) approximately $34.2 million in secured debt under their Pre-Petition Second Lien Facility; plus fees, costs and other charges and (c) approximately $157.8 million in senior notes (inclusive of the $8 million missed interest payment in March, 2011).

[7] A description of the Debtors' businesses, the reasons for commencing these chapter 11 cases and the relief sought from this Court to allow for a smooth transition into chapter 11 are set forth in the First Day Declaration.

1. Pre-Petition First Lien Facility.

9. The Debtors' principal prepetition funded debt obligations arise under that certain Credit Agreement dated as of January 31, 2007 (as amended on March 26, 2009 and as further amended, modified, waived or supplemented from time to time, the "***Pre-Petition First Lien Facility***"), by and among Sbarro, as borrower, and Holdings, and certain of the other Debtors, as guarantors, Cantor Fitzgerald Securities, as successor administrative agent (in such capacity, the "***Pre-Petition First Lien Agent***") and certain lenders from time to time party thereto (the "***Pre-Petition First Lien Lenders***"), which provided the Debtors with a $25.0 million revolving line of credit — including a $10.0 million letter of credit subfacility and a $5.0 million swing-line subfacility — and a $183 million term loan. Pursuant to an amendment dated March 26, 2009 and in connection with the Debtors' entry into the Pre-Petition Second Lien Facility (defined below), the amount of the Debtors' revolving facility was reduced to $21.5 million and the term loan was paid down to $158 million. The revolving loan facility is fully drawn; however, the Debtors also have approximately $3.6 million in outstanding letters of credit pursuant to the Pre-Petition First Lien Facility, which utilizes the remainder of the Borrower's availability under the revolving loan facility. In any event, due to prepetition Events of Default (as defined in the Pre-Petition First Lien Facility), the Borrower is not entitled to continue to draw on the revolving loan facility. Borrowings under the Pre-Petition First Lien Facility bear interest, at the Debtors' option, at either (a) the LIBOR rate plus 4.5% plus 2% default interest or (b) an alternative base rate plus 3.5% plus 2% default interest. The annual cash interest expense under the Pre-Petition First Lien Facility is approximately $8.3 million.

10. All obligations under the Pre-Petition First Lien Facility are guaranteed by Holdings as well as certain of Sbarro's domestic subsidiaries (the "***Pre-Petition Guarantors***"), all of which are Debtors in these chapter 11 cases. The Debtors' obligations under the Pre-

Petition First Lien Facility, including the guarantees thereof, are also secured by first priority perfected security interests in substantially all the assets of Sbarro, as well as all capital stock of Sbarro, Inc. and its domestic subsidiaries and up to 65% of the outstanding capital stock of Sbarro's foreign subsidiaries. The Pre-Petition First Lien Facility matures on (a) January 31, 2014 as to the outstanding term loans and (b) January 31, 2013 as to the outstanding revolving loans.

11. The First Lien Credit Agreement contains an earnings covenant that required the Debtors to maintain at least $43 million of EBITDA at the end of the fourth quarter of 2010. In light of weaker than expected performance in the fourth quarter of 2010, the Debtors did not generate EBITDA sufficient to satisfy the earnings covenant, leading them to default under the First Lien Credit Agreement. As further described below, to provide time to facilitate an orderly restructuring of their debt obligations, the Debtors entered into three forbearance agreements with the Pre-Petition First Lien Lenders.

2. Pre-Petition Second Lien Facility.

12. In addition, the Debtors have funded debt obligations arising under that certain Second Lien Credit Agreement dated as of March 26, 2009 (as amended modified, waived or supplemented from time to time, the "***Pre-Petition Second Lien Facility***," and, collectively with the Pre-Petition First Lien Facility, the "***Pre-Petition Facilities***"), by and among Sbarro, as borrower, certain of the Debtors as guarantors, Wilmington Trust FSB as successor administrative agent and collateral agent (the "***Pre-Petition Second Lien Agent***," and, collectively with the Pre-Petition First Lien Agent, the "***Pre-Petition Agents***") and certain lenders from time to time party thereto (collectively, the "***Pre-Petition Second Lien Lenders***," and, collectively with the Pre-Petition First Lien Lenders, the "***Pre-Petition Lenders***"). The Pre-Petition Second Lien Facility provided the debtor with $25.5 million (including original issue

discount) in secured term loans. Borrowings under the Pre-Petition Second Lien Facility bear interest at a rate of 15.0%, which is payable in kind for the first three years (*i.e.*, through March 2012). As of the Petition Date, as a result of accrued pay-in-kind interest since March 2009, the Debtors' outstanding principal obligations under the Pre-Petition Second Lien Facility total approximately $34.2 million.[8] Approximately 95% of these outstanding obligations are held by an affiliate of MidOcean Partners III, L.P. and certain of its affiliates.

13. All obligations under the Pre-Petition Second Lien Facility are guaranteed by the Pre-Petition Guarantors. The Debtors' obligations under the Pre-Petition Second Lien Facility, including the guarantees thereof, are also secured by second priority perfected liens and security interests in substantially all the assets and capital stock of Sbarro and its domestic subsidiaries as well as up to 65 percent of the outstanding capital stock of Sbarro's foreign subsidiaries. The Second Lien Credit Agreement matures on July 31, 2014.

3. Intercreditor Agreement.

14. On March 26, 2009, the applicable Debtors, the collateral agent for the Pre-Petition First Lien Lenders, and the collateral agent for the Pre-Petition Second Lien Lenders entered into the Intercreditor Agreement (attached hereto, as noted above, as Exhibit C) which, among other things, assigned relative priorities to claims arising under the Pre-Petition First Lien Facility and the Pre-Petition Second Lien Facility. The Intercreditor Agreement provides that liens and security interests provided to the Pre-Petition Second Lien Lenders on collateral are subordinate to the liens and security interests provided to the Pre-Petition First Lien Lenders on that same collateral. The Intercreditor Agreement also imposes certain limitations on: (a) the rights and remedies available to the Pre-Petition Second Lien Lenders so long as obligations

[8] After May 2012, the Debtors' outstanding principal obligations — depending on First Lien leverage — are payable in kind or cash at the borrowers election.

under the Pre-Petition First Lien Facility remain outstanding; and (b) the Pre-Petition Second Lien Lenders' ability to challenge or contest the validity or priority of liens arising under the Pre-Petition First Lien Facility.

15. Importantly, the Intercreditor Agreement provides in relevant part that the Pre-Petition Second Lien Lenders, in any bankruptcy proceedings involving the Debtors, will not request adequate protection or any related relief other than a junior lien co-extensive with, but subordinated to, any liens granted in such bankruptcy proceedings to the Pre-Petition First Lien Lenders. See Intercreditor Agreement §§ 6.1 & 6.2. As a result, the Debtors' Adequate Protection Obligations to the Pre-Petition Second Lien Lenders consist only of the Second Lien Adequate Protection Liens and certain information that is provided to the DIP Agent and DIP Lenders (the Pre-Petition First Lien Lenders have consented to the provision of such information). In addition, the Intercreditor Agreement provides that the Pre-Petition Second Lien Lenders will not object nor support any objection to or otherwise contest any use of Cash Collateral or any debtor in possession financing that the Pre-Petition First Lien Agent desires to permit to the Debtors. See id. § 6.1(a). Accordingly, the Pre-Petition Second Lien Lenders likewise are deemed to have consented to the Debtors' Cash Collateral use and to the DIP Facility itself.

4. Senior Notes.

16. Prior to the Petition Date, Sbarro issued $150 million in 10.375% Senior Notes due 2015 (collectively, the "***Notes***"). The Notes are governed by that certain Indenture dated as of January 31, 2007 (the "***Notes Indenture***"), by and among Sbarro, as issuer, certain domestic subsidiaries of Sbarro, as guarantors, and The Bank of New York, as trustee. The Notes bear interest at the rate of 10.375% *per annum*, payable semi-annually in arrears on February 1 and August 1 of each year.

17. The Notes Indenture provides that the Notes rank equally in right of payment with all of the Debtors' existing and future senior indebtedness. The Notes are effectively subordinated to all of the Debtors' secured indebtedness to the extent of the collateral securing such indebtedness.

18. Finally, the Notes Indenture provides holders of the Notes a put right upon a change of control of Sbarro. In particular, upon change of control, any holder may put Notes to Sbarro at a repurchase price of 101% of the principal amount of such Notes plus accrued and unpaid interest. Ares Corporate Opportunities Fund II, L.P. and certain of its affiliates hold more than a majority of the outstanding amount of the Senior Notes.

B. Proposed Postpetition Financing.

1. The Debtors' Marketing Efforts for Postpetition Financing.

19. In November 2010, the Debtors retained the investment bank Rothschild as their financial advisor and investment banker to assist the Debtors with their evaluation of strategic alternatives, including obtaining financing to fund the administrative costs of and to exit from a chapter 11 case. In the months prior to the Petition Date, the Debtors worked closely with their advisors to identify potential sources of postpetition financing, including, among others, the Pre-Petition First Lien Lenders as well as a group of Pre-Petition Second Lien Lenders and certain holders of Notes (the "***Noteholders***"). The Debtors and Rothschild engaged in discussions with a steering committee of certain of their Pre-Petition First Lien Lenders (the "***Steering Committee***") and ultimately received competing term sheets for a proposed postpetition financing from, respectively, the Pre-Petition First Lien Lenders on the one hand and the Pre-Petition Second Lien Lenders and the Noteholders on the other.

20. The Debtors and Rothschild also solicited indications of interest and entertained several unsolicited indications of interest with respect to potential postpetition financing from

various third parties for the purpose of testing the market and evaluating the Pre-Petition Lenders' financing proposals. Rothschild distributed solicitation materials and confidentiality agreements to 59 sophisticated financial institutions, collateralized loan and collateralized debt funds, as well as hedge funds and private equity funds active in the debtor in possession market in an effort to obtain alternative proposals for debtor in possession financing. In particular, Rothschild solicited these parties' interest in providing funding on either a priming or junior lien basis. The Debtors executed confidentiality agreements with and distributed a confidential financing overview memorandum to 19 of these parties. Rothschild and the Debtors identified potential lenders based on a number of factors, including their ability to quickly complete diligence and fund a transaction through debtor in possession financing.

21. Through discussions with potential lenders, it became apparent that the Debtors' existing capital structure, including the Debtors' level of secured debt and lack of unencumbered assets, likely foreclosed any opportunities for the Debtors to access unsecured or junior credit. Further, in the absence of a successful priming fight, any debtor in possession loan provided by parties other than the Pre-Petition First Lien Lenders would have required the consent of the Pre-Petition First Lien Lenders, which they indicated they would not be willing to provide.

22. Notwithstanding the time and costs likely to be incurred in any priming fight, two potential lenders identified by Rothschild during the marketing process — in addition to the Pre-Petition Lenders and Noteholders discussed above — submitted term sheets for a proposed debtor in possession financing facility prior to the Petition Date. The Debtors and their advisors carefully considered the merits of these proposals, including, particularly, the facilities proposed by the Pre-Petition Second Lien Lender and Noteholders. After thorough evaluation, the Debtors determined that the Pre-Petition First Lien Lenders' proposal offered reasonable postpetition

financing terms and allowed the Debtors to avoid the need to engage in a costly and time-consuming priming fight with the Pre-Petition First Lien Lenders right at the start of these cases. Ultimately, the Pre-Petition Second Lien Lender and Noteholders who had provided an alternative financing proposal agreed and now support the Debtors obtaining the DIP Facility from the Pre-Petition First Lien Lenders.

23. This support is evidenced in the plan support agreement to which the Pre-Petition Second Lien Lender and Noteholders are parties. The availability of postpetition financing is a key ingredient to the plan support agreement and the Debtors' overall restructuring goals. If the DIP Facility is not approved, the parties to the plan support agreement would have the right to terminate their obligations to support any chapter 11 plan consistent with the terms of the plan term sheet attached to the plan support agreement.

2. The DIP Facility.

24. After extended good faith, arm's-length negotiations, the Pre-Petition First Lien Lenders, as proposed DIP Lenders, agreed to provide the DIP Facility on the terms provided in the DIP Credit Agreement as summarized above. The proceeds of the DIP Facility, which the Debtors estimate will be sufficient to support them through the pendency of these chapter 11 cases, will be used (a) for general working capital and other purposes permitted under the DIP Credit Agreement, (b) to fund the costs of administering these chapter 11 cases and (c) to pay all fees and expenses provided for under the DIP Credit Agreement and authorized by the Court.

25. Importantly, terms similar to those included in the DIP Facility are standard for financing of this kind. Although the DIP Facility sets certain milestones for confirmation of a plan, it is not tied to any one plan in particular, but instead requires only that any plan satisfy administrative claims in full. Moreover, the Debtors successfully negotiated for several key concessions from the DIP Lenders, including removal of a "roll up" provision. The terms of the

DIP Facility therefore are especially attractive in comparison to the Debtors' other available financing options, especially in light of the inevitable priming fight that would occur to the extent the Debtors were to obtain financing from parties other than the Pre-Petition First Lien Lenders.

3. Use of Cash Collateral.

26. The DIP Credit Agreement also provides the Debtors with immediate access to the Cash Collateral, subject to the terms and conditions of the DIP Credit Agreement and the Interim DIP Order. Immediate access to the Cash Collateral will (a) ensure that the Debtors have sufficient working capital to, among other things, pay their employees, vendors, landlords and franchisees, (b) enable the Debtors to honor their prepetition obligations under and in accordance with other "first-day" orders entered by the Court and (c) satisfy administrative expenses incurred in connection with the commencement of these chapter 11 cases. By providing the Debtors with the immediate right to use the Cash Collateral in whichever of the Debtors' accounts it is currently held, the DIP Credit Agreement also avoids any business disruptions that would result if the Debtors were required to borrow under a postpetition facility to replenish their various operating accounts.

4. Adequate Protection Obligations.

27. The Debtors and the Pre-Petition Lenders have agreed on consideration that will adequately protect the Pre-Petition Lenders' interests in the Debtors' property from diminution in value caused by the Debtors' use of the Cash Collateral, as well as for any decline in, or diminution of, the value of the Pre-Petition Lenders' liens or security interests under the Pre-Petition Facilities. Specifically, the Debtors have agreed to provide (a) (i) First Lien Adequate Protection Liens (*i.e.*, valid, perfected replacement security interests and liens in and on all of the Collateral, subordinate to existing liens senior to the liens of the Pre-Petition Lenders and the

DIP Liens); and (ii) Second Lien Adequate Protection Liens (i.e., valid, perfected replacement security interests and liens in and on all of the Collateral, subordinate to the liens of the Pre-Petition First Lien Lenders and the First Lien Adequate Protection Liens); and (b) superpriority administrative expense claims for the First Lien Adequate Protection Liens with priority in payment greater than all other administrative expense claims allowed in these chapter 11 cases and subject only to the superpriority claims granted under the DIP Facility. In addition, the Debtors have agreed to make the Adequate Protection Payments to the Pre-Petition First Lien Lenders.

28. Pre-Petition Second Lien Lenders will receive only the Second Lien Adequate Protection Lien for the priming of their prepetition liens and the Debtors' use of Cash Collateral, as well as information provided to the DIP Lenders and DIP Agent. As noted above, the Intercreditor Agreement restricts the adequate protection that Pre-Petition Second Lien Lenders may receive in any insolvency proceeding of the Debtors to junior liens that are co-extensive but subordinated to any First Lien Adequate Protection Liens.

BASIS FOR RELIEF

A. The Debtors Should be Authorized to Obtain Postpetition Financing through the DIP Documents.

1. Entering into the DIP Documents is an Exercise of the Debtors' Sound Business Judgment.

29. For the reasons set forth in greater detail below, the Court should authorize the Debtors to enter into the DIP Documents, and obtain access to the DIP Facility and the Cash Collateral, as an exercise of the Debtors' sound business judgment. At their core, the statutory predicates for a debtor to enter into the DIP Documents require the exercise of sound business judgment.

30. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances as described in greater detail below. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant debtors considerable deference in acting in accordance with its sound business judgment in obtaining such credit. *See In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) ("the applicable factors can be synthesized as follows: (1) That the proposed financing is an exercise of sound and reasonable business judgment . . . .").

31. Furthermore, in determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Documents, the Court should consider the economic terms of the DIP Facility in light of current market conditions. *See, e.g.*, Transcript of Record at 734 35:24 1, *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Mar. 5, 2009) (recognizing that "the terms that are now available for DIP facilities in the current economic environment aren't as desirable" as in the past). Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition

facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

Case No. 09-13125 (Bankr. S.D.N.Y. July 6, 2009).

32. The Debtors' execution of the DIP Documents is an exercise of their sound business judgment that warrants approval by the Court. Prior to the Petition Date, the Debtors and their advisors undertook a detailed investigation as to the Debtors' projected financing needs during the pendency of any chapter 11 case, and determined that the Debtors would require significant postpetition financing to support their operational and restructuring activities. Accordingly, the Debtors negotiated the DIP Documents with the DIP Lenders in good faith, at arm's-length, and with the assistance of outside counsel, in order to obtain the required postpetition financing on terms favorable to the Debtors. Based on the advice of counsel and other professionals, and the Debtors' own analysis, the Debtors have determined in their sound business judgment that the DIP Documents provide a greater amount of financing on more favorable terms than any other reasonably available alternative.

33. Specifically, as noted above, the DIP Documents will provide the Debtors with access to $16.5 million immediately after entry of the Interim DIP Order and a total of $35

million after entry of the Final DIP Order, which the Debtors and their advisors have independently determined should be sufficient to support the Debtors' ongoing operations and reorganization activities through the pendency of these chapter 11 cases. Additionally, the DIP Documents provide the Debtors with access to the Cash Collateral, which relieves the Debtors of the cost of borrowing additional amounts to replace that cash. Accordingly, the Debtors submit that entering into the DIP Documents constitutes an exercise of the Debtors' sound business judgment that should be approved by the Court.

2. The Debtors Should be Authorized to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis.

34. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
>
> (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).

35. In order to satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n* (*In re Snowshoe Co.*) 789 F.2d 1085, 1088 (4th Cir. 1986). "The statute imposes no duty to seek

credit from every possible lender before concluding that such credit is unavailable." *Id.*; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom.*, *Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989). *See also Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

36. As described above, the Debtors and Rothschild identified and solicited offers from 58 potential postpetition lenders over the course of several months. Nineteen of those potential lenders executed confidentiality agreements with the Debtors and conducted diligence regarding potential postpetition financing terms. Notwithstanding these efforts, the Debtors were simply unable to obtain sufficient, or any, postpetition financing in the form of unsecured credit or as an administrative expense. The Debtors' significant secured debt precludes them from obtaining postpetition financing in the amount they require on terms other than on a secured and superpriority basis. The Court should therefore (1) authorize the Debtors to provide the DIP Agent, on behalf of itself and the other DIP Lenders, senior liens on the Debtors' unencumbered property as provided in section 364(c)(3) of the Bankruptcy Code, and junior liens on the Debtors' property that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date (other than the liens primed under the DIP Facility) or to

valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, as provided in section 364(c)(2) of the Bankruptcy Code; and (2) grant the Debtors' repayment obligations under the DIP Documents superpriority administrative expense status as provided for in section 364(c)(1) of the Bankruptcy Code.

3. The Debtors Should be Authorized to Obtain Postpetition Financing Secured by First Priority Priming Liens.

37. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property, without the consent of the existing lienholders, if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1).

38. When determining whether to authorize a debtor to obtain credit secured by a "priming" lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtors' assets. Courts consider a number of factors, including, without limitation:

(a) whether alternative financing is available on any other basis (*i.e.*, whether any better offers, bids or timely proposals are before the court);

(b) whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors' business;

(c) whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s);

(d) whether the proposed financing agreement was negotiated in good faith and at arm's length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor's estate and its creditors; and

(e) whether the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., Ames Dep't Stores, 115 B.R. at 37-39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *Farmland Indus.*, 294 B.R. at 862-79, *cited in* Transcript of Record at 733:3-7, *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Mar. 5, 2009); *Barbara K. Enters.*, 2008 WL 2439649 at *10; *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (15th ed. rev. 2008). The DIP Documents satisfy each of these factors.

39. First, as described above, the Debtors and their advisors explored a variety of possible financing sources, and ultimately determined that the DIP Lenders offered the most viable option for obtaining the postpetition financing the Debtors require. The Debtors conducted arm's-length negotiations with the DIP Lenders regarding the terms of the DIP Documents, and those agreements reflect the most favorable terms on which the DIP Lenders were willing to offer financing. No alternative financing at the favorable terms offered in the DIP Facility is available to the Debtors, and the Debtors are not able to obtain financing from the DIP Lenders other than financing secured by first priority priming liens.

40. Second, the Debtors need the funds to be provided under the DIP Documents to preserve the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Facility and use of the Cash Collateral, the Debtors will be unable to operate their business or prosecute their chapter 11 cases, which will threaten the Debtors' significant going concern value. Providing the Debtors with the liquidity necessary to preserve their going concern value through the pendency of these chapter 11 cases is in the best interest of all stakeholders.

41. Third, the DIP Documents will provide the Debtors with immediate access to $16.5 million in postpetition financing, which the Debtors and their advisors have independently

determined is sufficient and, as discussed in greater detail below, necessary to allow the Debtors to maintain their operations and their relationships with key constituents notwithstanding the commencement of these chapter 11 cases. Further, the DIP Documents provide the Debtors with use of the Cash Collateral, which will maintain the Debtors' ability to access liquidity in the same accounts as prior to the Petition Date, without the disruption or delay that would result if the Debtors were required to set aside that cash and re-fund their accounts with new postpetition borrowings. Accordingly, the terms of the DIP Documents are reasonable and the DIP Loans and the Cash Collateral are sufficient to support the Debtors' operations and restructuring activities through the pendency of these chapter 11 cases.

42. Fourth, as described in greater detail above and in the First Day Declaration and the Augustine Declaration, the Debtors and the DIP Lenders negotiated the DIP Documents in good faith and at arm's-length, and the Debtors' entry into the DIP Documents is an exercise of their sound business judgment and is in the best interests of their estates, creditors and other parties in interest.

43. Fifth, as described below, the Debtors will provide adequate protection for the Pre-Petition Lenders' liens on and security interests in the Cash Collateral as well as any decline in, or diminution of, the value of the Pre-Petition Lenders' liens or security interests under the Pre-Petition Facilities. Both the Pre-Petition First Lien Lenders and the Pre-Petition Second Lien Lenders have consented to the adequate protection package to be provided.

4. The Interests of the Pre-Petition Lenders Are Adequately Protected.

44. A debtor may obtain postpetition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides "adequate protection" to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection

may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case"); *In re Realty Sw. Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted).

45. The adequate protection provided by the Adequate Protection Obligations, as described in detail above and set forth in the DIP Orders, is fair and reasonable, and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

46. In exchange for, and in reliance on, the Adequate Protection Obligations, the Pre-Petition Agents and the Pre-Petition Lenders have consented to the priming of their prepetition liens. Accordingly, the Court should find that the Adequate Protection Obligations are fair and reasonable, and satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

B. <u>The Debtors Should be Authorized to Use the Cash Collateral</u>.

47. Section 363(c) of the Bankruptcy Code restricts a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that:

> The trustee may not use, sell, or lease cash collateral . . . unless-
>
> (A) each entity that has an interest in such cash collateral consents; or
>
> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Further, section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or

without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

48. The Debtors have satisfied the requirements of sections 363(c)(2) and (e), and should be authorized to use the Cash Collateral. First, pursuant to the DIP Documents, the Pre-Petition Agents and the DIP Lenders have consented to the Debtors' use of the Cash Collateral.

49. Second, the Pre-Petition Lenders' interests in the Cash Collateral are adequately protected in satisfaction of section 363(e) of the Bankruptcy Code.[9] As described above, the Debtors are providing the Pre-Petition First and Second Lien Lenders with the Adequate Protection Obligations, which are fair and reasonable, and adequately protect the Pre-Petition Lenders' interests in the collateral securing the Debtors' prepetition obligations from diminution caused by the DIP Facility, including by the Debtors' use of the Cash Collateral pursuant to the terms thereof. Although the Pre-Petition Second Lien Lenders are receiving only replacement liens to protect their interests in Cash Collateral, any adequate protection that Pre-Petition Second Lien Lenders may receive is limited by the terms of the Intercreditor Agreement. Contractually, the Pre-Petition Second Lien Lenders may not receive anything above the Second Lien Adequate Protection Liens.[10] Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

C. Certain Provisions of the DIP Financing Agreements.

50. As described above, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lenders in exchange for their providing the DIP Facility. Specifically, the

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9 The Debtors are not aware of any entity other than the Debtors and the Pre-Petition Lenders that has or purports to have an interest in the Cash Collateral.

10 In addition, and as noted above, the Pre-Petition Second Lien Lenders are deemed to have consented to the Debtors' Cash Collateral use and to the DIP Facility itself, by virtue of the Intercreditor Agreement. See Intercreditor Agreement § 6.1(a).

Debtors will pay to the DIP Lenders certain up-front and other arrangement fees in favor of certain of the DIP Lenders, and an administrative agency fee in favor of the DIP Agent, in each case as set forth in a confidential side letter. Additionally, the Debtors have agreed, subject to Court approval, to pay an unused commitment fee equal to 0.75% *per annum* on the daily average unused portion of the DIP Facility.

51. The fees the Debtors have agreed to pay to the DIP Lenders, together with the other provisions of the DIP Documents, represent the most favorable terms to the Debtors on which the DIP Lenders would agree to make the DIP Facility available. The Debtors considered the fees described above when determining in their sound business judgment that the DIP Documents constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute their chapter 11 cases, and paying these fees in order to obtain the DIP Facility is in the best interests of the Debtors' estates, creditors and other parties in interest.

52. Courts routinely authorize debtors to pay fees similar to those the Debtors propose to pay, where the associated financing is, in the debtors' business judgment, beneficial to the debtors' estates. *See, e.g.*, *In re Insight Health Services Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011) (approving 2.0% DIP closing fee); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 30, 2010) (approving 3.1% DIP and exit facility fee); *In re The Reader's Digest Ass'n*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Oct. 6, 2009) (approving 3% exit fee), *In re Lear Corp.*, Case No. 14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009) (approving 5.0% up front fee and a 1.0% exit/conversion fee); *In re Gen. Growth Prop., Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009) (approving 3.75% exit fee); *In re Aleris Int'l. Inc.*, Case No. 09-10478 (Bankr. D. Del. Mar. 18,

2009) (approving 3.5% exit fee and 3.5% front-end net adjustment against each lender's initial commitment); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Jan. 13, 2009) (approving an up-front 3% facility fee); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 8, 2009) (approving exit fee of 3%); *In re DJK Residential*, Case No. 08-10375 (Bankr. S.D.N.Y. Feb. 29, 2008) (approving 3% fee in connection with postpetition financing). Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Documents in connection with entering into those agreements.

53. The terms of the DIP Documents, including the key provisions described above, constitute, on the whole, the most favorable terms on which the Debtors could obtain needed postpetition financing.

D. The DIP Lenders Should be Deemed Good Faith Lenders under Section 364(e).

54. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Specifically, section 364(e) provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

55. As explained in detail herein and in the Augustine Declaration, the DIP Documents are the result of the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain needed postpetition financing, and

of extended arm's-length, good faith negotiations between the Debtors and the DIP Lenders. The terms and conditions of the DIP Documents are fair and reasonable, and the proceeds under the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section.

E. Modification of the Automatic Stay Is Warranted.

56. The DIP Documents and the proposed Interim DIP Order contemplate that the automatic stay arising under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default (as such term is defined in the DIP Credit Agreement), all rights and remedies provided for in the DIP Credit Agreement, and to take various other actions without further order of or application to the Court. The DIP Documents provide, however, that the DIP Lenders must provide the Debtors and various other parties, including the United States Trustee for the Bankruptcy Court for the Southern District of New York and counsel to any committee appointed in these chapter 11 cases, with seven (7) business days prior written notice before exercising any enforcement rights or remedies, which will allow the Debtors and other interested parties to seek an expedited hearing before the Court for the purpose of determining whether, in fact, an Event of Default has occurred and is continuing.

57. Stay modification provisions of this sort are ordinary features of DIP facilities and, in the Debtors' business judgment, are reasonable under the circumstances. *See, e.g.*, *In re Insight Health Servs. Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June

30, 2010); *In re The Reader's Digest Ass'n*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Oct. 6, 2009); *In re Lear Corp.*, Case No. 14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009); *In re Gen. Growth Prop. Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 23, 2009); *In re Wellman, Inc.*, Case No. 08-10595 (Bankr. S.D.N.Y. Apr. 7, 2008); *In re Musicland Holding Corp.*, Case No. 06-10064 (Bankr. S.D.N.Y. Feb. 21, 2006).

F. Authority to Effectuate the Successor Agent Agreement is Warranted

58. On April 1, 2011, with the consent of the Debtors, CFS succeeded BofA as administrative agent under the Pre-Petition Credit Facility. CFS is also (with the consent of the Debtors) undertaking to succeed BofA as collateral agent under the Pre-Petition First Lien Facility, but CFS was unable to do so prior to the commencement of these chapter 11 cases.

59. In order to complete this transition as collateral agent (and to maintain the perfection of the liens granted under the Pre-Petition First Lien Facility), CFS will need to take certain actions post-petition, including without limitation (i) filing multiple financing statements; (ii) entering into deposit account control agreements with the Debtors' depositary bank(s) (or assignment thereof); and (iii) taking possession of, or control over, any of the collateral.

60. Sections 362(b)(3) and 546(e)(2) of the Bankruptcy Code authorize a party to act to maintain the perfection of an interest in property without first seeking relief from the automatic stay. The purpose of the 362(b)(3) exception is to "'protect, in spite of the surprise intervention of the bankruptcy petition, those whom State law protects' by allowing them to perfect an interest they obtained before the bankruptcy proceedings began." *Reedsburg Util. Comm'n v. Grede Foundries*, 2010 U.S. Dist. LEXIS 51302, at *15 (W.D. Wisc. May 24, 2010) (quoting H.R. Rep. No. 95-595, at 371 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6327). In this case, as provided in section 362(b)(3) of the Bankruptcy Code, the Pre-Petition First Lien

Lenders or their appointed representative should be permitted to "act to perfect, or to maintain or continue the perfection" of their liens in the Collateral regardless of which entity serves as their representative. *See, e.g.*, *In re Ibuous*, 2009 Bankr. LEXIS 4397, at *6-9 (Bankr. M.D. Fla. Sept. 30, 2009); *see also* 3 COLLIER ON BANKRUPTCY ¶ 362.05[4] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010) ("Although some cases have found that the creditor's position is frozen upon the commencement of a bankruptcy case, section 362(b)(3) permits filing of the continuation statement, which enables the creditor to assure its continued perfection.").

61. CFS should be permitted to succeed BofA as the Pre-Petition First Lien Collateral Agent without jeopardizing the perfection of the Pre-Petition First Lien Lenders' liens on and interests in the Collateral. Prior to the Petition Date, the Borrower, Holdings, certain other Debtors, CFS, BofA and certain Pre-Petition First Lien Lenders entered into that certain Successor First Lien Agent Agreement dated as of April 1, 2011 and attached hereto as **Exhibit D** (the "***Successor Agreement***") to effectuate the transfer of the administrative agent and collateral agent responsibilities for the First Lien Facility. Pursuant to the Successor Agreement, CFS has already succeeded BofA as the Pre-Petition First Lien Agent. BofA no longer wishes to serve as the Pre-Petition First Lien Collateral Agent either, and CFS is willing to and capable of assuming this role. Pursuant to the Successor Agreement, upon the Collateral Agency Effective Date, BofA has agreed to assign to CFS each of the Pre-Petition First Lien Lenders' liens and security interests granted to BofA under the Pre-Petition First Lien Documents, and CFS had agreed to assume all such liens and security interests. Importantly, no parties object to this change.

62. Because the parties were concerned that, if the transfer was not executed properly, the validity, enforceability or perfection of the Pre-Petition First Lien Lenders' liens on, and

security interests in, the Collateral could have been impaired, the parties agreed to wait to effectuate the change to the Pre-Petition First Lien Collateral Agent from BofA to CFS until after the Petition Date out of an abundance of caution. As the successor to BofA, CFS will need to take a number of actions to maintain the perfection of the liens and security interests, including (i) filing multiple financing statements; (ii) entering into deposit account control agreements with the Debtors' depositary bank(s) (or assignment thereof); and (iii) taking possession of or control over any of the collateral. Understandably, due to the amount of effort required to prepare these chapter 11 cases, the parties did not wish to bear undue risk to perfection in the final three days prior to the Petition Date. The parties agreed to postpone the transfer and request court approval of the transfer postpetition**.**

63. Not only is this transfer from BofA to CFS permitted under the Bankruptcy Code, at least one court has declined to find a violation of the automatic stay in a chapter 11 case when a bank that had acquired another bank's secured claim post-petition filed a UCC-3 Assignment Statement and UCC-3 Continuation Statement during the pendency of the proceedings. *In re Ibuous*, 2009 Bankr. LEXIS 4397, at *6-9 (Bankr. M.D. Fla. Sept. 30, 2009); *see also* 3 COLLIER ON BANKRUPTCY ¶ 362.05[4] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010) ("[S]ection 362(b)(3) permits filing of the continuation statement, which enables the creditor to assure its continued perfection.").

64. The Debtors hereby seek court approval to allow CFS to succeed BofA as the Pre-Petition First Lien Collateral Agent. The Debtors request that BofA be authorized and directed to assign or transfer to CFS each of the Pre-Petition First Lien Lenders' liens and security interests granted to BofA under the Pre-Petition First Lien Documents, and CFS be authorized and directed to assume all such liens and security interests.

G. The Debtors Require Immediate Access to the Cash Collateral and DIP Facility

65. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2) and (c)(2). In examining requests for interim relief under this rule, courts in this jurisdiction generally apply the same business judgment standard applicable to other business decisions. *See, e.g., Ames Dep't Stores*, 115 B.R. at 36.

66. The Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein, including authorizing the Debtors to use the Cash Collateral and to borrow up to $16.5 million under the DIP Documents, is not granted promptly after the Petition Date. Further, the Debtors anticipate that the commencement of these chapter 11 cases will significantly and immediately increase the demands on their free cash as a result of, among other things, the costs of administering these chapter 11 cases and addressing key constituents' concerns regarding the Debtors' financial health and ability to continue operations in light of these chapter 11 cases. Accordingly, the Debtors have an immediate need for access to liquidity to, among other things, continue the operation of their business, maintain their relationships with customers, landlords and franchisees, meet payroll, pay capital expenditures, procure goods and services from vendors and suppliers and otherwise satisfy their working capital and operational needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties in interest.

67. The importance of a debtor's ability to secure postpetition financing to prevent immediate and irreparable harm to its estate has been repeatedly recognized in this district in similar circumstances. *See, e.g.*, *In re Insight Health Servs. Holdings Corp.*, Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011); *In re NR Liquidation III Co. (f/k/a Neff Corp.)*, Case No.

10-12610 (SCC) (Bankr. S.D.N.Y. June 30, 2010); *In re The Reader's Digest Ass'n*, Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Aug. 26, 2009); *In re Lear Corp.*, Case No. 14326 (ALG) (Bankr. S.D.N.Y. Aug. 4, 2009); *In re Gen. Growth Prop. Inc.*, Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Jan. 13, 2009); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 8, 2009); *In re Lenox Sales, Inc.*, Case No. 08-14679 (S.D.N.Y. Nov. 25, 2008); *In re Wellman, Inc.*, No. 08-10595 (S.D.N.Y. Feb. 27, 2008). Accordingly, for all of the reasons set forth above, prompt entry of the Interim DIP Order is necessary to avert immediate and irreparable harm to the Debtors' estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2).

REQUEST FOR A FINAL HEARING

68. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date, which is no sooner than 15 days after the date of this Motion and no later than 40 days after the entry of the Interim DIP Order, to hold a hearing to consider entry of the Final DIP Order and the permanent approval of the relief requested in this Motion.[11] The Debtors also request authority to serve a copy of the signed Interim DIP Order, which fixes the time and date for the filing of objections, if any, to entry of the Final DIP Order, by first class mail upon the notice parties listed below, and further request that the Court deem service thereof sufficient notice of the hearing on the Final DIP Order under Bankruptcy Rule 4001(c)(2).

NOTICE

69. The Debtors have provided notice of the Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the Consolidated List of Creditors Holding the 40 Largest Unsecured Claims filed pursuant to Bankruptcy Rule

[11] The DIP Credit Agreement requires that the Final DIP Order be entered no later than 40 days after entry of the Interim DIP Order. *See* DIP Credit Agreement § 1.01 (definition of "Termination Date").

1007(d); (c) counsel to the agent for the Debtors' proposed postpetition secured lenders and for the Debtors' Pre-Petition First Lien Lenders; (d) counsel to the Debtors' Pre-Petition Second Lien Lender; (e) the agent for the Debtors' Pre-Petition Second Lien Lender; (f) the indenture trustee for the Debtors' senior notes; (g) counsel to the ad hoc group of certain holders of the Debtors' senior notes; (h) the Internal Revenue Service; and (i) the Securities and Exchange Commission. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

NO PRIOR REQUEST

70. No prior motion for the relief requested herein has been made to this or any other court.

[*Concluded on the following page.*]

WHEREFORE, for the reasons set forth herein and in the First Day Declaration and the Augustine Declaration, the Debtors respectfully request that this Court (a) enter the Interim DIP Order and the Final DIP Order granting the relief requested herein on an interim and permanent basis, respectively, and (b) grant such other and further relief as is just and proper.

Dated: New York, New York
April 4, 2011

/s/ Nicole L. Greenblatt

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Proposed Counsel to the Debtors and
Debtors in Possession

EXHIBIT A

Interim DIP Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
SBARRO, INC., *et al.*,[1]	)	Case No. 11-_____(___)
Debtors.	)	Joint Administration Requested

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING AND TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION LENDERS, (III) SCHEDULING A FINAL HEARING AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "***Motion***"), dated April 4, 2011, of Sbarro, Inc. (the "***Borrower***") and its affiliated debtors, each as debtor and debtor-in-possession (collectively, the "***Debtors***"), in the above-captioned cases (the "***Cases***") pursuant to sections 105, 361, 362, 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "***Bankruptcy Code***"); rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"); and rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the "***Local Rules***"), seeking, among other things:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Sbarro, Inc. (1939); Holdings (3819); Carmela's of Kirkman Operating, LLC (1182); Carmela's of Kirkman LLC (7703); Carmela's, LLC (8088); Corest Management, Inc. (9134); Demefac Leasing Corp. (2379); Larkfield Equipment Corp. (7947); Las Vegas Convention Center LLC (7645); Sbarro America Properties, Inc. (9540); Sbarro America, Inc. (9130); Sbarro Blue Bell Express LLC (1419); Sbarro Commack, Inc. (4007); Sbarro Express LLC (0253); Sbarro New Hyde Park, Inc. (6185); Sbarro of Las Vegas, Inc. (2853); Sbarro of Longwood, LLC (0328); Sbarro of Virginia, Inc. (2309); Sbarro Pennsylvania, Inc. (3530); Sbarro Properties, Inc. (9541); Sbarro Venture, Inc. (3182); Sbarro's of Texas, Inc. (5139); Umberto at the Source, LLC (8024); Umberto Deer Park, LLC (8728); Umberto Hauppauge, LLC (8245); Umberto Hicksville, LLC (0989); Umberto Huntington, LLC (8890); and Umberto White Plains, LLC (8159). The Debtors' service address is: 401 Broadhollow Road, Melville, New York 11747.

(1) authorization for the Borrower to obtain post-petition financing (the "***Financing***"), and for each of the other Debtors (the "***Guarantors***") to guaranty the Borrower's obligations in connection with the Financing, up to the aggregate principal amount of $35,000,000 (the actual available principal amount at any time being subject to those conditions set forth in the DIP Documents (as defined below)), from Cantor Fitzgerald Securities ("***CFS***"), acting as Administrative Agent and Collateral Agent (in such capacity, the "***DIP Agent***"), for itself and any future syndicate of financial institutions (the "***DIP Lenders***") to be arranged by CFS (the "***Lead Arranger***");

(2) authorization for the Debtors to execute and enter into the DIP Documents and to perform such other and further acts as may be required in connection with the DIP Documents;

(3) the granting of adequate protection to (i) the lenders (the "***Pre-Petition First Lien Lenders***") under or in connection with that certain Credit Agreement, dated as of January 31, 2007 (as heretofore amended, supplemented or otherwise modified, the "***First Lien Credit Agreement***"), by and among MidOcean SBR Acquisition Corp., the Borrower, Sbarro Holdings, LLC ("***Holdings***"), the lenders party thereto, CFS, as successor to Bank of America, N.A. ("***BofA***"), as administrative agent for the Pre-Petition First Lien Lenders (the "***Pre-Petition First Lien Agent***"), and BofA as collateral agent (the "***Pre-Petition First Lien***

Collateral Agent") and that certain Security Agreement, dated as of January 31, 2007, by and among the Borrower, BofA as collateral agent, and the other parties thereto (as heretofore amended, supplemented or otherwise modified, the "***Security Agreement***" and, collectively with the First Lien Credit Agreement, the Guaranty (as defined in the First Lien Credit Agreement) and all other Loan Documents (as defined in the First Lien Credit Agreement, the "***Pre-Petition First Lien Documents***"), or any other documents governing Finance Obligations as defined in the First Lien Credit Agreement, the "***Pre-Petition First Lien Facility***"), and (ii) the lenders (the "***Pre-Petition Second Lien Lenders***" and together with the Pre-Petition First Lien Lenders, the "***Pre-Petition Lenders***") under or in connection with that certain Second Lien Credit Agreement, dated as of March 26, 2009 (as heretofore amended, supplemented or otherwise modified, the "***Second Lien Credit Agreement***" and together with the Pre-Petition First Lien Facility, the "***Pre-Petition Facilities***"), by and among the Borrower, Holdings, the lenders party thereto, and Wilmington Trust FSB ("***Wilmington***"), as successor to Natixis, New York Branch as administrative agent and collateral agent for the Pre-Petition Second Lien Lenders (the "***Pre-Petition Second Lien Agent***" and together with the Pre-Petition First Lien Agent, the "***Pre-Petition Agents***"), in each case, whose liens and security interests are being primed by the Financing;

(4) authorization for the Debtors to use cash collateral (as such term is defined in the Bankruptcy Code) in which the Pre-Petition Lenders have an interest, and the granting of adequate protection to the Pre-Petition Lenders with respect to, inter alia, such use of their cash collateral and all use and diminution in the value of the Pre-Petition Collateral (as defined below);

(5) approval of certain stipulations by the Debtors with respect to the Pre-Petition First Lien Facility and the liens and security interests arising therefrom;

(6) the granting of superpriority claims to the DIP Lenders payable from, and having recourse to, all pre-petition and post-petition property of the Debtors' estates and all proceeds thereof (including, subject only to and effective upon entry of a Final Order (as defined below), any Avoidance Proceeds (as defined below)), subject to the Carve-Out (as defined below);

(7) subject only to and effective upon entry of a final order granting such relief and such other relief as provided herein and in such final order, the limitation of the Debtors' right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code;

(8) pursuant to Bankruptcy Rule 4001, that an interim hearing (the "***Interim Hearing***") on the Motion be held before this Court to consider entry of the proposed interim order annexed to the Motion (the

"***Interim Order***") (a) authorizing the Borrower, on an interim basis, to obtain the Financing forthwith (subject to any limitations of borrowings under the DIP Documents) to provide operating cash for the Debtors: (i) $20,000,000 under a term loan borrowing, with $16,500,000 to be made available to the Borrower in a single draw upon entry of this Interim Order and the balance of $3,500,000 to be made available to the Borrower in a single draw within one business day following the entry of the Final Order and (ii) delayed-draw term loan borrowings in the aggregate amount of $15,000,000, which shall be made available to the Borrower until the Termination Date, either (A) in a single draw upon 3 business days' notice as a delayed-draw term loan or (B) in two draws of $7.5 million each upon 5 business days' notice, (b) authorizing the Debtors' use of cash collateral, and (c) granting the adequate protection described herein; and

(9) that this Court schedule a final hearing (the "***Final Hearing***") to be held within 40 days of the entry of this Interim Order to consider entry of a final order (the "***Final Order***") authorizing the balance of the borrowings under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents filed with this Court.

(10) due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on the forty largest unsecured creditors of each of the Debtors, on the DIP Agent, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition

Lenders and the United States Trustee for the Southern District of New York.

(11) the Interim Hearing having been held by this Court on April 5, 2011.

(12) upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction*. This Court has core jurisdiction over the Cases, this Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice*. Under the circumstances, the notice given by the Debtors of the Motion and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and (c) and Local Rule 4001-2.

3. *Debtors' Stipulations*. Without prejudice to the rights of any other party (but subject to the limitations thereon contained in paragraphs 18 and 23 below), the Debtors admit, for themselves but not their estates, stipulate and agree that:

(a) (i) as of the filing of the Debtors' chapter 11 petitions (the "***Petition Date***"), the Borrower was indebted and liable to the Pre-Petition First Lien Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately $172,697,500.00 in respect of revolving and term loans made and in the aggregate principal amount of approximately $3,470,611.53 in respect of

letters of credit issued and outstanding, in each case, by the Pre-Petition First Lien Lenders pursuant to, and in accordance with the terms of, the Pre-Petition First Lien Facility, plus, in each case, interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Pre-Petition First Lien Facility), charges and other obligations incurred in connection therewith as provided in the Pre-Petition First Lien Facility (collectively, the "***Pre-Petition First Lien Debt***"), (ii) the Pre-Petition First Lien Debt constitutes the legal, valid and binding obligation of the Debtors, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code) and (iii) no portion of the Pre-Petition First Lien Debt is subject to avoidance, recharacterization, recovery or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and

(b) the liens and security interests granted to the Pre-Petition First Lien Agent pursuant to and in connection with the Pre-Petition First Lien Facility (including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Pre-Petition First Lien Agent, for its benefit and for the benefit of the Pre-Petition First Lien Lenders), are (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the personal and real property described in the Pre-Petition First Lien Facility (the "***Pre-Petition Collateral***"); (ii) not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law and (iii) subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined

below) to which the DIP Liens are subject and (C) any valid, perfected and unavoidable liens permitted under the Pre-Petition First Lien Facility to the extent such permitted liens are senior to or pari passu with the liens of the Pre-Petition First Lien Agent on the Pre-Petition Collateral.

4. *Findings Regarding the Financing.*

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Debtors have an immediate need to obtain the Financing and use Cash Collateral (as defined below) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs. The access by the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Agent and the DIP Lenders, subject to the Carve-Out as provided for herein, the DIP Liens and the Superpriority Claims (as defined

below) under the terms and conditions set forth in this Interim Order and in the DIP Documents.

(d) The terms of the Financing and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The Financing has been negotiated in good faith and at arm's length among the Debtors, the DIP Agent and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the Financing and the DIP Documents, including, without limitation, (i) all loans made to the Debtors pursuant to the credit agreement (the "***DIP Credit Agreement***") and guaranteed by the Debtors pursuant to the guaranty, substantially in the forms attached as an exhibit to the DIP Credit Agreement and (ii) any other Senior Credit Obligations (as defined in the DIP Credit Agreement), in each case owing to the DIP Agent, any DIP Lender or any of their respective banking affiliates (all of the foregoing in clauses (i) and (ii) collectively, the "***DIP Obligations***"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2) and Local Rule 4001-2. Absent the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the Financing and the use of Cash Collateral in accordance with this Interim Order and the DIP Documents is therefore in the best interest of the Debtors' estates.

5. *Authorization of the Financing and the DIP Documents.*

(a) The Debtors are hereby authorized to enter into the DIP Documents. The Borrower is hereby authorized to borrow money pursuant to the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty such borrowings and the Borrower's obligations with respect to such borrowings up to $16,500,000 upon entry of this Interim Order and, subject to entry of the Final Order, an aggregate principal or face amount of $35,000,000 (plus interest, fees and other expenses and amounts provided for in the DIP Documents), in accordance with the terms of this Interim Order and the DIP Documents, which shall be used for all purposes permitted under the DIP Documents, including, without limitation, to provide working capital for the Borrower and the Guarantors, for other general corporate purposes and to pay interest, fees and expenses in accordance with this Interim Order and the DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all

fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under the Financing, including, without limitation:

(i) the execution, delivery and performance of the Loan Documents (as defined in the DIP Credit Agreement) and any exhibits attached thereto, including, without limitation, the DIP Credit Agreement, the Collateral Documents (as defined in the DIP Credit Agreement) and any mortgages contemplated thereby (collectively, and together with the letter agreements referred to in clause (iii) below, the "***DIP Documents***");

(ii) the execution, delivery and performance of one or more amendments to the DIP Credit Agreement for, among other things, the purpose of adding additional financial institutions as DIP Lenders and reallocating the commitments for the Financing among the DIP Lenders, in each case in such form as the Debtors, the DIP Agent and the DIP Lenders may agree (it being understood that no further approval of the Court shall be required for amendments to the DIP Credit Agreement that do not shorten the maturity of the extensions of credit thereunder or increase the commitments or the rate of interest payable thereunder);

(iii) the non-refundable payment to the DIP Agent [, the Lead Arranger] or the DIP Lenders, as the case may be, of the fees referred to in the DIP Credit Agreement (and in the separate letter agreements between them in connection with the Financing) and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents; and

(iv) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms. No obligation, payment, transfer or grant of security under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(d) The Pre-Prepetition Second Lien Agent and the Pre-Petition Second Lien Lenders are deemed to have consented to the Debtors' execution of the DIP Documents and the DIP Facility provided thereunder pursuant to section 6.1(a) of the Intercreditor Agreement.

6. *Superpriority Claims.*

(a) Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the

Bankruptcy Code (the "***Superpriority Claims***"), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof, subject only to the Carve-Out to the extent specifically provided for herein.

(b) For purposes hereof, the "***Carve-Out***" means (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code not to exceed $100,000 and (iii) (A) at any time after the first business day after the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement) and delivery of a notice by the DIP Agent stating that such notice constitutes a "Carve Out Notice" (a "***Carve-Out Notice***") to (w) the United States Trustee for the Southern District of New York, (x) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022 (Attention: Jason Kanner, Esq. and Edward Sassower, Esq.), (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Jinsoo Kim, Esq. and Timothy Graulich, Esq.) and (z) counsel for any Official Committee of Unsecured Creditors appointed in the chapter 11 cases (the "***Creditors' Committee***"), to the extent allowed at any time, whether before or after delivery of a Carve-Out Notice, whether by interim order, procedural order or otherwise, all professional fees, costs and expenses incurred or accrued by persons or firms retained by the Debtors and any statutory committees appointed in the chapter 11 cases (each a

"***Committee***") (but excluding fees and expenses of third party professionals employed by such Committees' members) and allowed by the Bankruptcy Court at any time (collectively, the "***Professional Fees***") in an aggregate amount not exceeding $4,000,000 (the "***Carve-Out Cap***"), plus all (B) unpaid Professional Fees allowed by the Bankruptcy Court at any time that were incurred on or prior to the day immediately following the business day after delivery of the Carve-Out Notice; *provided*, *however*, that (x) the dollar limitation in the clause 6(b)(iii)(A) on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the delivery of a Carve-Out Notice or by any fees, expenses, indemnities or other amounts paid to the DIP Agent or any DIP Lender or such party's respective attorneys and agents under the DIP Credit Agreement or otherwise and (y) immediately upon delivery of a Carve-Out Notice, the Debtors shall be required to transfer from their concentration account to a segregated account (the "***Carve-Out Account***") not subject to the control of the DIP Agent an amount equal to the Carve-Out Cap, which segregated account funds shall be available only to satisfy obligations benefitting from the Carve-Out, and the DIP Agent and the DIP Lenders (1) shall not sweep or foreclose on cash of the Debtors necessary to fund the Carve-Out Account and (2) shall have a security interest in any residual interest in the Carve-Out Account available following satisfaction in full of all obligations benefitting from the Carve-Out. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (i), (ii) and (iii) above. Notwithstanding anything to the contrary in this Interim DIP Order, all liens and

claims granted pursuant to the Interim DIP Order, as well as all liens and claims granted pursuant to any Pre-Petition Facility, shall be subject to the Carve-Out.

7. *DIP Liens*.

As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agent of, or over, any Collateral (as defined below), the following security interests and liens are hereby granted to the DIP Agent for its own benefit and the benefit of the DIP Lenders (all property identified in clauses (a), (b) and (c) below, including, without limitation the Pre-Petition Collateral, being collectively referred to as the "***Collateral***"), subject, only in the event of the occurrence and during the continuance of an Event of Default, to the payment of the Carve-Out (all such liens and security interests granted to the DIP Agent, for its benefit and for the benefit of the DIP Lenders and the Senior Credit Parties (as defined in the DIP Credit Agreement) pursuant to this Interim Order and the DIP Documents, the "***DIP Liens***"):

(a) First Lien on Cash Balances and Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all pre- and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to valid, perfected and non-avoidable liens (collectively, "***Unencumbered Property***"), including, without

limitation, all cash and cash collateral of the Debtors (whether maintained with the DIP Agent or otherwise) and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing. Unencumbered Property shall exclude the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "***Avoidance Actions***"), but subject only to and effective upon entry of the Final Order, shall include any proceeds or property recovered, unencumbered or otherwise the subject of successful Avoidance Actions, whether by judgment, settlement or otherwise ("***Avoidance Proceeds***"). Notwithstanding anything contained herein to the contrary, the Borrower and the Guarantors shall not be required to pledge to the DIP Agent in excess of 65% of the voting capital stock of its first tier foreign subsidiaries (if, in the reasonable judgment of the Borrower, a pledge of a greater percentage could result in material adverse tax consequences to the Borrower).

(b) Liens Priming Pre-Petition Lenders' Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors (including, without limitation, cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition

Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing), whether now existing or hereafter acquired, that is subject to the existing liens presently held by the Pre-Petition Lenders (including in respect of issued but undrawn letters of credit). Such security interests and liens shall be senior in all respects to the interests in such property of the Pre-Petition Lenders arising from current and future liens of the Pre-Petition Lenders (including, without limitation, adequate protection liens granted hereunder), but shall not be senior to any valid, perfected and unavoidable interests of other parties arising out of liens, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Pre-Petition Lenders become subject subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

(c) Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all pre- and post-petition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 7, as to which the liens and security interests in favor of the DIP Agent will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected

subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, which security interests and liens in favor of the DIP Agent are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or (ii) any liens arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors.

(e) The Pre-Prepetition Second Lien Agent and the Pre-Petition Second Lien Lenders are deemed to have consented to the adequate protection provided to the Pre-Petition First Lien Lenders in this Interim Order pursuant to section 6.1(a) of the Intercreditor Agreement.

8. *Protection of DIP Lenders' Rights.*

(a) Subject to the provisions of paragraph 17(b) of this Interim Order, so long as there are any borrowings or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid) outstanding, or the DIP Lenders have any Commitment (as defined in the DIP Credit Agreement) under the DIP Credit Agreement, the Pre-Petition Agents and the Pre-Petition Lenders shall (i) have no right to and take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Pre-Petition Facilities or this

Interim Order, or otherwise seek or exercise any enforcement rights or remedies against any Collateral or in connection with any of the Adequate Protection Liens, including, without limitation, in respect of the occurrence or continuance of any event of default (as defined in the First Lien Credit Agreement and the Second Lien Credit Agreement, respectively), except to the extent authorized by an order of this Court, (ii) be deemed to have consented to any release of Collateral authorized under the DIP Documents, (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Collateral unless, solely as to this clause (iii), the DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the date of filing and (iv) deliver or cause to be delivered, at the Debtors' costs and expense (for which the Pre-Petition Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases and/or assignments (to the extent provided for herein) in favor of the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of the Adequate Protection Liens on any portion of the Collateral subject to any sale or disposition approved or arranged for by the DIP Agent; and

(b) The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, (i) upon the occurrence of an Event of Default (as defined in the

DIP Credit Agreement), and seven days' prior written notice to the Debtors (with a copy to counsel to the Creditors' Committee and to the U.S. Trustee), all rights and remedies under the DIP Documents other than those rights and remedies against the Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of such an Event of Default and seven days' prior written notice to the extent provided for in the DIP Credit Agreement, all rights and remedies against the Collateral (A) provided for in the DIP Documents (including, without limitation, the right to setoff monies of the Debtors in accounts maintained with the DIP Agent or any DIP Lender) or (B) of the Pre-Petition First Lien Collateral Agent provided for in the Pre-Petition First Lien Credit Agreement. In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors and Pre-Petition Lenders shall not be entitled to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lenders set forth in this Interim Order or the DIP Documents. In no event shall the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

9. *Limitation on Charging Expenses Against Collateral*. Subject only to and effective upon entry of the Final Order, and to the extent provided for therein, except to the extent of the Carve-Out, no expenses of administration of the Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other

proceedings under the Bankruptcy Code, shall be charged against or recovered from the Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the Pre-Petition First Lien Agent, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent, the Pre-Petition First Lien Lenders, or any other party.

10. *The Cash Collateral*. To the extent any funds were on deposit with any Pre-Petition Lender as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Pre-Petition Lender immediately prior to the filing of the Debtors' bankruptcy petitions (the "***Petition Time***") (regardless of whether, as of the Petition Time, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the "***Deposited Funds***") are subject to rights of setoff. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Pre-Petition Lenders pursuant to sections 506(a) and 553 of the Bankruptcy Code. The Pre-Petition First Lien Lenders are obligated, to the extent provided in the Pre-Petition First Lien Facility, to share the benefit of such liens and setoff rights with the other Pre-Petition First Lien Lenders party to such Pre-Petition First Lien Facility. Similarly, the Pre-Petition Second Lien Lenders are obligated, to the extent provided in the Intercreditor Agreement (as defined below), to pay over any recovery or proceeds from such liens and setoff rights to the Pre-Petition First Lien Agent for the benefit of the Pre-Petition First Lien Lenders. Any proceeds of the Pre-Petition Collateral (including the Deposited Funds or any other funds on deposit at any of the Pre-

Petition Lenders or at any other institution as of the Petition Date) are cash collateral of the Pre-Petition First Lien Lenders within the meaning of section 363(a) of the Bankruptcy Code. The Deposited Funds, together with such other cash collateral of any of the Pre-Petition Lenders within the meaning of section 363(a) of the Bankruptcy Code (including, without limitation, all proceeds of Pre-Petition Collateral), are referred to herein as "***Cash Collateral***."

11. *Use of Cash Collateral*. The Debtors are hereby authorized, subject to the terms and conditions of the DIP Documents, to use all Cash Collateral of the Pre-Petition Lenders, and the Pre-Petition Lenders are directed promptly to turn over to the Debtors all Cash Collateral received or held by them; *provided* that the Pre-Petition Lenders are granted adequate protection as provided herein. The Debtors' right to use Cash Collateral shall terminate automatically on the Maturity Date (as defined in the DIP Credit Agreement). In addition, if the Borrower voluntarily terminates the Commitment prior to the Maturity Date, the Debtors shall, for the benefit of the Pre-Petition First Lien Lenders, continue to comply with the requirements of Articles 6 and 7 of the DIP Credit Agreement and, upon any failure by the Debtors to observe any such requirement or upon the occurrence of any event that would have constituted an Event of Default under the DIP Credit Agreement prior to the termination of the Commitments in their entirety, the Pre-Petition First Lien Agent on behalf of the Pre-Petition First Lien Lenders shall have the immediate right unilaterally to terminate the Debtors' right to use Cash Collateral, subject to giving five days prior written notice to the Debtors (with a copy to counsel to the Creditors' Committee and to the U.S. Trustee), it being understood that all parties

reserve all rights to challenge such termination and/or seek the continued use of Cash Collateral under the same, similar or different terms as the Court shall determine at such time.

12. *Pre-Petition First Lien Lenders' Adequate Protection*. The Pre-Petition First Lien Lenders are entitled, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their interest in the Pre-Petition Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Pre-Petition First Lien Lenders' interest in the Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Pre-Petition Collateral, the priming of the Pre-Petition First Lien Agent's security interests and liens in the Pre-Petition Collateral by the DIP Agent and the DIP Lenders pursuant to the DIP Documents and this Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code. As adequate protection, the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders are hereby granted the following (collectively, the "***Senior Adequate Protection Obligations***"):

(a) Senior Adequate Protection Liens. The Pre-Petition First Lien Agent (for itself and for the benefit of the Pre-Petition First Lien Lenders) is hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and lien upon all the Collateral, subject and subordinate only to (i) the security interests

and liens granted to the DIP Agent for the benefit of the DIP Lenders in this Interim Order and pursuant to the DIP Documents and any liens on the Collateral to which such liens so granted to the DIP Agent are junior and (ii) the Carve-Out (such liens, the "***Senior Adequate Protection Liens***"). Without limiting the generality of the foregoing, (A) the Senior Adequate Protection Liens granted to the Pre-Petition First Lien Lenders hereunder shall be senior to all Junior Adequate Protection Liens upon and in the Collateral; (B) until such time as all of the DIP Obligations are indefeasibly paid in full in cash in accordance with the DIP Documents and this Interim Order, the Pre-Petition First Lien Lenders shall have no right to seek or exercise any enforcement rights or remedies in connection with the Senior Adequate Protection Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined in the First Lien Credit Agreement); (C) the Pre-Petition First Lien Lenders shall be deemed to have consented to the Financing (which Financing shall constitute a DIP Financing as defined in the intercreditor agreement dated as of March 26, 2009 by and between BofA as collateral agent under the First Lien Credit Agreement and the Pre-Petition Second Lien Agent as collateral agent under the Second Lien Credit Agreement (the "***Intercreditor Agreement***")); (D) the Pre-Petition First Lien Lenders shall be deemed to have consented to any sale or disposition of Collateral approved by, or arranged for or by, the Pre-Petition Agent at the direction of the Required Lenders (as defined in the First Lien Credit Facility) and shall terminate and release, upon any such sale or disposition, all of their liens on and security interests in such Collateral; and (E) the Pre-Petition First Lien Lenders shall deliver or cause to be delivered, at the Debtors' costs and expense (for

which the Pre-Petition First Lien Lenders shall be reimbursed upon submission to the Debtors of invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of the Pre-Petition First Lien Lenders' liens on or security interests in any portion of the Collateral subject to any sale or disposition approved or arranged for by the DIP Agent.

(b) Section 507(b) Claim. The Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders are hereby granted, subject to the payment of the Carve-Out, a superpriority claim as provided for in section 507(b) of the Bankruptcy Code, immediately junior to the claims under section 364(c)(1) of the Bankruptcy Code held by the DIP Agent and the DIP Lenders; *provided, however*, that the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the superpriority claims under section 507(b) of the Bankruptcy Code granted hereunder or under the Pre-Petition First Lien Facility, unless and until the DIP Obligations have indefeasibly been paid in cash in full.

(c) Interest, Fees and Expenses. The Pre-Petition First Lien Agent shall receive from the Debtors (i) immediate cash payment of all accrued and unpaid interest on the Pre-Petition First Lien Debt and letter of credit fees at the contractual default rates provided for in the Pre-Petition First Lien Facility, and all other accrued and unpaid fees and disbursements (including, but not limited to, fees owing to the Pre-Petition Lien Agent and the reasonable fees and disbursements of counsel, financial and other consultants for the Pre-Petition First Lien Agent) owing to the Pre-Petition First Lien Agent under the Pre-Petition First Lien Facility and incurred prior to the Petition

Date; (ii) current cash payments of all fees and expenses payable to the Pre-Petition First Lien Agent under the terms of the Pre-Petition First Lien Facility (including, but not limited to, fees owing to the Pre-Petition First Lien Agent and the reasonable fees and disbursements of counsel and one financial advisor for the Pre-Petition First Lien Agent) promptly upon receipt of invoices therefor, provided, however, for the avoidance of doubt, that the Debtors shall compensate Conway Del Genio Gries & Co, LLC ("***CDG***") as the financial advisor for the Pre-Petition First Lien Agent in the amounts set forth in the engagement letter dated December 22, 2010 (as supplemented on April 1, 2011) between CDG and Davis Polk & Wardwell LLP; and (iii) on the first business day of each month, all accrued but unpaid interest on the Pre-Petition First Lien Debt and letters of credit and other fees at the contractual default rate applicable on the Petition Date (including LIBOR pricing options available in accordance with the Pre-Petition First Lien Facility) under the Pre-Petition First Lien Facility.

(d) Information. The Debtors shall provide the Pre-Petition First Lien Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the DIP Agent or the DIP Lenders.

(e) Payment from Proceeds of Disposition of Collateral. If all DIP Obligations shall have been indefeasibly paid in full and all Commitments terminated in their entirety, then the proceeds from asset sales shall be used to repay the Pre-Petition First Lien Debt. If all DIP Obligations shall have been indefeasibly paid in full and all Commitments terminated in their entirety and all of the Pre-Petition First Lien Debt has

been indefeasibly paid in full, then the proceeds from asset sales shall be used to repay the Pre-Petition Second Lien Debt.

(f) Successor Collateral Agent.

(i) Pursuant to that certain Successor First Lien Agent Agreement dated as of April [1], 2011, by and among the Borrower, Holdings, certain other Debtors, CFS, BofA and certain Pre-Petition First Lien Lenders (the "***Successor Agreement***"), CFS shall, upon the occurrence of the Collateral Agency Effective Date (as defined in the Successor Agreement), succeed BofA as the Pre-Petition First Lien Collateral Agent.

(ii) Upon the Collateral Agency Effective Date, BofA is hereby authorized and directed to assign to CFS, pursuant to section 2(b) of the Successor Agreement, each of the Pre-Petition First Lien Lenders' liens and security interests granted to BofA under the Pre-Petition First Lien Documents, and CFS is hereby authorized and directed to assume all such liens, for its benefit and for the ratable benefit of all other secured parties, including the Pre-Petition First Lien Lenders, under the Pre-Petition First Lien Documents. Such assignment and transfer shall have no effect on the validity, priority and perfection of such liens and security interests.

(iii) Subject to the terms of the Pre-Petition First Lien Documents, pursuant to sections 362(b)(3) and 546(e)(2)of the Bankruptcy Code, and without further order of this Court or action by the

Debtors (except as may be required pursuant to the Successor Agreement), CFS is hereby authorized and directed to take all steps that it believes to be necessary or appropriate to maintain the perfection of the Pre-Petition First Lien Lenders' interests in and liens on the Collateral, including without limitation, by (A) filing or recording financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction; (B) entering into deposit account control agreements with the Debtors' depositary bank(s) (or assignment thereof); and (C) taking possession of or control over any of the Collateral.

13. *Pre-Petition Second Lien Lenders' Adequate Protection*. The Pre-Petition Second Lien Lenders are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of its interest (if any) in the Pre-Petition Collateral, for and equal in amount to the aggregate diminution in value of the Pre-Petition Second Lien Lenders' interests in the Pre-Petition Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of the Pre-Petition Collateral, the priming pursuant to the DIP Documents and this Interim Order of the Pre-Petition Second Lien Lenders' security interests and liens in the Pre-Petition Collateral by the DIP Agent, the Pre-Petition First Lien Agent, the DIP Lenders and the Pre-Petition First Lien Lenders, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, the "***Junior Adequate Protection Obligations***" and together with the Senior Adequate Protection Obligations, the "***Adequate Protection Obligations***"). The Pre-Petition Second Lien Lenders shall be

granted valid, binding, continuing, enforceable, fully-perfected junior security interests in and liens upon all of the Collateral (collectively, the "***Junior Adequate Protection Liens***" and together with the Senior Adequate Protection Liens, the "***Adequate Protection Liens***"). Without limiting the generality of the foregoing, (i) the Junior Adequate Protection Liens granted to the Pre-Petition Second Lien Lenders hereunder shall be junior and subordinate in all respects to the Pre-Petition First Lien Lenders' liens and security interests (including, without limitation, the Pre-Petition First Liens and the Senior Adequate Protection Liens) upon and in the Collateral; (ii) the Junior Adequate Protection Liens shall be junior and subordinate in right of payment to all Senior Adequate Protection Obligations; (iii) until such time as all of the DIP Obligations and Senior Adequate Protection Obligations are indefeasibly paid in full in cash in accordance with the DIP Documents, the Pre-Petition First Lien Documents and this Interim Order, the Pre-Petition Second Lien Lenders shall have no right to seek or exercise any enforcement rights or remedies in connection with the Junior Adequate Protection Liens, including, without limitation, in respect of the occurrence or continuance of any Event of Default (as defined in the Second Lien Credit Agreement); (iv) the Pre-Petition Second Lien Lenders shall be deemed to have consented to any sale or disposition of Collateral approved by, or arranged for or by, the Pre-Petition First Lien Agent, and shall terminate and release upon any such sale or disposition all of its liens on and security interests in such Collateral; and (v) the Pre-Petition Second Lien Lenders shall deliver or cause to be delivered, at the Debtors' costs and expense (for which the Pre-Petition Second Lien Lenders shall be reimbursed upon submission to the Debtors of

invoices or billing statements), any termination statements, releases or other documents necessary to effectuate and/or evidence the release and termination of the Pre-Petition Second Lien Lenders' security interests in or liens on any portion of the Collateral subject to any sale or disposition approved or arranged for by the Pre-Petition First Lien Agent. Pursuant to sections 6.01 and 6.02 of the Intercreditor Agreement, the Pre-Petition Second Lien Lenders are deemed to have consented to the adequate protection set forth herein. The Debtors shall provide the Pre-Petition Second Lien Lenders with any written financial information or periodic reporting that is provided to, or required to be provided to, the Pre-Petition First Lien Agent, the DIP Agent or the DIP Lenders.

14. *Funding of Carve-Out Account*. Notwithstanding anything to the contrary herein, following delivery of a Carve-Out Notice and prior to any further payment to any Pre-Petition Agent or to any Pre-Petition Lender, the Carve-Out Account shall have been fully funded.

15. *Reservation of Rights of Pre-Petition First Lien Lenders*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Pre-Petition Lenders; *provided* that the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders may request further or different adequate protection, and the Debtors or any other party may contest any such request. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses

available in law or equity to the Pre-Petition First Lien Agent, any Pre-Petition First Lien Lender, the DIP Agent or any DIP Lender, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement, if any, with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

16. *Perfection of DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 8(a) above, the DIP Agent, the DIP Lenders, the Pre-Petition Agents and the Pre-Petition Lenders are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect, the liens and security interests granted to them hereunder. Whether or not the DIP Agent or the Pre-Petition Agents on behalf of their respective lenders shall, in their sole discretion (subject to the provisions of paragraph 8(a) above), choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of, the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Agent, the Pre-Petition Agents and the Pre-Petition Lenders, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case without representation or

warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve and enforce any DIP Liens.

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

(c) Any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other post-petition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting post-petition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders in accordance with the terms of the DIP Documents or this Interim Order.

17. *Preservation of Rights Granted Under this Interim Order.*

(a) Other than those allowed in this Interim Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to any of (i) the DIP Agent and the DIP Lenders or (ii) the Pre-Petition First Lien Agent and the Pre-Petition First Lien Lenders shall be granted or allowed while any portion of the

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

(b) Unless all DIP Obligations shall have been indefeasibly paid in full and the Senior Adequate Protection Obligations shall have been paid in full, the Debtors shall not seek, and it shall constitute an Event of Default and shall terminate the right of the Debtors to use Cash Collateral if any of the Debtors seeks, or if there is entered, (i) any modifications or extensions of this Interim Order without the prior written consent of the DIP Agent and the Pre-Petition First Lien Agent, and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Agent and the Pre-Petition First Lien Agent or (ii) an order converting or dismissing any of the Cases. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agent and the DIP Lenders and, as applicable, the Pre-Petition Agents and the Pre-Petition Lenders pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate

Protection Obligations shall have been paid and satisfied in full (and that such Superpriority Claims, priming liens and replacement security interests shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in (i) above.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity of any DIP Obligations or Senior Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent or the Pre-Petition First Lien Agent, as applicable, of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations or Senior Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, or DIP Obligations or Senior Adequate Protection Obligations incurred by the Debtors to the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Lenders prior to the actual receipt of written notice by the DIP Agent and the Pre-Petition First Lien Agent of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agent, DIP Lenders, Pre-Petition First Lien Agent and Pre-Petition First Lien Lenders shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and pursuant to the DIP Documents

with respect to all uses of Cash Collateral, DIP Obligations and Senior Adequate Protection Obligations.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Cases to a case under chapter 7, dismissing any of the Cases, terminating the joint administration of these Cases or by any other act or omission, (ii) the entry of an order approving the sale of any Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents) or (iii) the entry of an order confirming a plan of reorganization in any of the Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Cases, in any successor cases if these Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and all other rights and remedies of the DIP Agent and the DIP Lenders granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

18. *Effect of Stipulations on Third Parties.* The stipulations and admissions contained in this Interim Order, including, without limitation, in paragraph 3 of this Interim Order, shall be binding upon the Debtors and any successor thereto (including,

without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) in all circumstances. The stipulations and admissions contained in this Interim Order, including, without limitation, in paragraph 3 of this Interim Order, shall be binding upon all other parties in interest, including, without limitation, any official committee, unless (a) a party in interest has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in paragraph 19) by no later than the date that is 60 days from the date of entry of the Final DIP Order in accordance with Local Rule 4001-2(f) (or such later date (x) as has been agreed to, in writing, by the Pre-Petition First Lien Agent in its sole discretion or (y) as has been ordered by the Court) (i) challenging the validity, enforceability, priority or extent of the Pre-Petition First Lien Debt or the Pre-Petition First Lien Agent's or the Pre-Petition First Lien Lenders' liens on the Pre-Petition Collateral or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, "***Claims and Defenses***") against the Pre-Petition First Lien Agent or any of the Pre-Petition First Lien Lenders or their affiliates, representatives, attorneys or advisors in connection with matters related to the Pre-Petition First Lien Facility, the Pre-Petition First Lien Debt, the Pre-Petition Collateral, and (b) there is a final order in favor of the plaintiff sustaining any such challenge or claim in any such timely filed adversary proceeding or contested matter; *provided* that, as to the Debtors, all such Claims and Defenses are hereby irrevocably waived and relinquished as of the Petition Date. If no such adversary proceeding or contested matter

is timely filed, (x) to the extent not theretofore repaid, the Pre-Petition First Lien Debt and all related obligations of the Debtors (the "***Pre-Petition First Lien Obligations***") shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 cases and (y) the Pre-Petition First Lien Agent's liens, the Pre-Petition First Lien Lenders' liens (including the Senior Adequate Protection Liens), and the DIP Liens, shall be deemed to have been, as of the Petition Date, legal, valid, binding and perfected, not subject to recharacterization, subordination or avoidance, and such liens shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or 11 trustee appointed or elected for any of the Debtors). If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 3 of this Interim Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any official committee (including the Creditors' Committee) and on any other person or entity, except to the extent that such findings and admissions were expressly challenged in such adversary proceeding or contested matter. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including any official committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Claims and Defenses with respect to the Pre-Petition First Lien Facilities or the Pre-Petition First Lien Obligations.

19. *Limitation on Use of Financing Proceeds and Collateral.*

(a) Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, Cash Collateral, Collateral or the Carve-Out may be used to (i) object or contest, or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Pre-Petition First Lien Facility, or the liens or claims granted under this Interim Order, the DIP Documents or the Pre-Petition First Lien Facility, (ii) assert any Claims and Defenses or causes of action against the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Lenders or their respective agents, affiliates, representatives, attorneys or advisors, (iii) prevent, hinder or otherwise delay the DIP Agent's assertion, enforcement or realization on the Cash Collateral or the Collateral in accordance with the DIP Documents or this Interim Order, (iv) seek to modify any of the rights granted to the DIP Agent, the DIP Lenders, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Lenders hereunder or under the DIP Documents or the Pre-Petition First Lien Facility, in each of the foregoing cases without such parties' prior written consent or (v) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (A) approved by an order of this Court and (B) in accordance with the DIP Credit Agreement; *provided, however,* that in the case of clauses (i) and (ii) above, such limitations shall not apply to any investigation by an official committee to the extent that such amounts for all official committees in the aggregate do not exceed $50,000.

20. *Milestone Defaults*. The occurrence of any of the following (collectively, the "***Milestone Defaults***") shall be an Event of Default under the DIP Documents:

(a) Interim and Final Order. Within 45 days after the Petition Date, the Court shall not have entered the Final Order.

(b) Acceptable Reorganization Plan. Within 60 days after the Petition Date (or such later date as agreed to by the Required Lenders (as defined in the DIP Facility, the "***Required DIP Lenders***")), a plan of reorganization (an "***Acceptable Plan of Reorganization***") that provides for payment of all administrative claims, including without limitation the DIP Obligations shall not have been filed with the Court.

(c) Disclosure Statement Order. Within 90 days after the Petition Date (or such later day as agreed to by the Required DIP Lenders), the Court shall not have entered an order approving the adequacy of a disclosure statement for an Acceptable Plan of Reorganization.

(d) Confirmation Order. Within 170 days after the Petition Date (or such later day as agreed to by the Required DIP Lenders), the Court shall not have entered an order (the "***Confirmation Order***") confirming an Acceptable Plan of Reorganization.

(e) Consummation. Within 180 days after the Petition Date (or, if earlier, within 30 days following the date of entry of the Confirmation Order), an Acceptable Plan of Reorganization shall not have been substantially consummated pursuant to section 1101(2) of the Bankruptcy Code.

21. *Preservation of the Pre-Petition First Lien Agent's Right to Credit Bid*. Subject only to and effective upon entry of the Final Order, the Pre-Petition First Lien Agent shall have the right to credit bid the Pre-Petition First Lien Debt upon the direction of the Required Lenders (as defined in the Pre-Petition First Lien Facility), in connection with a sale of any Pre-Petition Collateral conducted pursuant to (i) an Acceptable Plan of Reorganization in any of the Cases that is subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code or (ii) section 363 of the Bankruptcy Code (subject to the consent of the DIP Agent, unless all DIP Obligations have been paid or other otherwise satisfied and all Commitments have been terminated in their entirety, and to the extent permitted by the DIP Credit Agreement).

22. *Interim Order Governs*. In the event of any inconsistency between the provisions of this Interim Order and the DIP Documents, the provisions of this Interim Order shall govern.

23. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition Lenders, any official committee appointed in these Cases and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Pre-Petition Agents, the Pre-Petition Lenders and the Debtors and their respective successors and assigns; *provided*, *however*, that the DIP Agent and the DIP

Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors.

24. *Final Hearing*. The Final Hearing is scheduled for [_____], 2011 at [_____ __].m. before this Court.

25. *Notice*. The Debtors shall promptly mail copies of this Interim Order (which shall constitute adequate notice of the Final Hearing, including, without limitation, notice that the Debtors will seek approval at the Final Hearing of a waiver of rights under section 506(c) of the Bankruptcy Code) to the parties having been given notice of the Interim Hearing, and to any other party that has filed a request for notices with this Court and to any official committee after the same has been appointed, or such committee's counsel, if the same shall have been appointed. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections; which objections shall be served upon (A) the United States Trustee for the Southern District of New York; (B) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022 (Attention: Jason Kanner, Esq. and Edward Sassower, Esq.), counsel for the Debtors; (C) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Jinsoo Kim, Esq. and Timothy Graulich, Esq.), counsel for CFS as the Pre-Petition First Lien Agent and as the DIP Agent and BofA as the Pre-Petition First Lien Collateral Agent; (D) Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, New York (Attention: Daniel Holzman, Esq.), counsel to the Pre-Petition Second Lien Lenders; (E) Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, New York 10005-1413 (Attention: Blair

M. Tyson), counsel to the Pre-Petition Second Lien Agent; and (F) counsel for the Official Committee of Unsecured Creditors, if any, and shall be filed with the Clerk of the United States Bankruptcy Court, Southern District of New York, in each case to allow actual receipt by the foregoing no later than [_____], 2011 at 4:00 p.m., prevailing Eastern time.

Dated: New York, New York
_____, 2011

_____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

DIP CREDIT AGREEMENT

Execution Copy

$35,000,000

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

dated as of April 4, 2011

among

SBARRO, INC. (a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code),
as Borrower,

SBARRO HOLDINGS, LLC (a Debtor and a Debtor-in-Possession under Chapter 11 of the Bankruptcy Code),
as Holdings,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

and

CANTOR FITZGERALD SECURITIES,
as Administrative Agent and Collateral Agent

CANTOR FITZGERALD SECURITIES,
as Sole Lead Arranger and Sole Book Manager

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT

This Debtor-In-Possession Credit Agreement (this "**Agreement**") is entered into as of April 4, 2011 among SBARRO HOLDINGS, LLC, a Delaware limited liability company and a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code ("**Holdings**"), SBARRO, INC., a New York corporation and a debtor and debtor-in-possession in a case pending under Chapter 11 of the Bankruptcy Code (the "**Borrower**"), each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**"), and CANTOR FITZGERALD SECURITIES, as Administrative Agent and Collateral Agent.

WHEREAS, on April 4, 2011, Holdings, the Borrower and each of the Subsidiary Guarantors filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under Chapter 11 of the Bankruptcy Code (the cases of the Borrower and the Subsidiary Guarantors, each a "**Case**" and collectively, the "**Cases**") and have continued in the possession of their assets and in the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, Holdings and the Borrower are party to that certain Credit Agreement, dated as of January 31, 2007, by and among MidOcean SBR Acquisition Corp., the Borrower, Holdings, the lenders party thereto, CFS, as successor administrative agent and collateral agent, and the other agents, arrangers and managers party thereto (as amended, supplemented (including pursuant to forbearance agreements) or otherwise modified prior to the Petition Date (as defined below) and including all exhibits and other ancillary documentation in respect thereof, the "**Pre-Petition First Lien Credit Agreement**") pursuant to which the Loan Parties were truly and justly indebted to the Pre-Petition First Lien Lenders on the Petition Date in the principal amount of $176,168,111.53 (including the aggregate outstanding face amount of issued but undrawn letters of credit outstanding thereunder) in respect of the extensions of credit provided for thereunder.

WHEREAS, the Borrower has requested that the Lenders extend credit in the form of (i) Initial Term Loans on the Closing Date in an aggregate principal amount of $16,500,000, (ii) Second Term Loans on the Second Funding Date in an aggregate principal amount of $3,500,000 and (iii) Delayed Draw Term Loans at any time and from time to time during the Delayed Draw Availability Period in an aggregate principal amount not to exceed $15,000,000.

The Lenders are willing to make the requested credit facility available on the terms and conditions set forth herein. Accordingly, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms.* As used in this Agreement, the following terms have the meanings set forth below:

"**363 Sale**" means a sale of all or substantially all of the assets of the Borrower and its subsidiaries pursuant to section 363 of the Bankruptcy Code.

"**Abbreviated Perfection Certificate**" means with respect to any Loan Party a certificate, substantially in the form of Exhibit G-4 to this Agreement, duly executed on behalf of such Loan Party by a Responsible Officer of such Loan Party.

"**Acceptable Plan of Reorganization**" means a Reorganization Plan that upon effectiveness, will pay all allowed administrative expense claims (including, without limitation, the Senior Credit Obligations).

"**Accession Agreement**" means a Loan Party Accession Agreement, substantially in the form of Exhibit J hereto, executed and delivered by an Additional Subsidiary Guarantor after the Closing Date in accordance with Section 6.12(a) or (d).

"**Actual Versus Forecast Report**" means a report in the same form, and containing the same information, as the "Actual Versus Forecast" reports delivered by the Borrower prior to the Petition Date pursuant to the forbearance agreements entered into with the Pre-Petition First Lien Lenders.

"**Additional Collateral Documents**" has the meaning specified in Section 6.12(b).

"**Additional Subsidiary Guarantor**" means each Person that becomes a Subsidiary Guarantor after the Closing Date by execution of an Accession Agreement as provided in Section 6.12(a).

"**Adjusted Eurodollar Rate**" means, for the Interest Period for each Eurodollar Loan comprising part of the same Group, the quotient obtained (expressed as a decimal, carried out to five decimal places) by dividing (i) the applicable Eurodollar Rate for such Interest Period by (ii) 1.00 minus the Eurodollar Reserve Percentage.

"**Administrative Agent**" means Cantor Fitzgerald Securities, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"**Administrative Agent's Office**" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"**Agency Fee Letter**" means the Agency Fee Letter dated April 4, 2011 between the Borrower and CFS, as amended, modified or supplemented from time to time.

"**Agent**" means the Administrative Agent, the Collateral Agent and any successors and assigns in such capacity, and "Agents" means any two or more of them.

"**Aggregate Commitments**" means at any date the Commitments of all the Lenders.

"**Agreement**" means this Credit Agreement, as amended, modified or supplemented from time to time.

"**Applicable Margin**" for purposes of calculating (a) the applicable interest rate means for any Eurodollar Loans, 7.00% or for Base Rate Loans, 6.00% and (b) the applicable rate of the Commitment Fee for any day for purposes of Section 2.11 means 0.75%.

"**Applicable Percentage**" means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender's Commitment at such time; *provided* that if the Commitment of each Lender to make Term Loans has been terminated pursuant to Section 8.02 or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"**Approved Budget"** has the meaning specified in Section 6.01(c)

"**Approved Fund**" means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"**Asset Disposition**" means any sale (including any Sale/Leaseback Transaction, whether or not involving a Capital Lease), lease (as lessor), transfer or other disposition (including any such transaction effected by way of merger or consolidation and including any sale or other disposition by any Group Company of Equity Interests of a Subsidiary, but excluding any sale or other disposition by way of Casualty or Condemnation) by any Group Company of any asset. For avoidance of doubt, an Equity Issuance or capital contribution by any Person shall not constitute an Asset Disposition by that Person.

"**Assignee Group**" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor or by Affiliated investment advisors.

"**Assignment and Assumption**" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, substantially in the form of Exhibit C hereto or any other form approved by the Administrative Agent.

"**Attributable Indebtedness**" means, at any date, (i) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (ii) in respect of any Synthetic Lease Obligation of any Person, the capitalized or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement were accounted for as a Capital Lease and (iii) in respect of any Sale/Leaseback Transaction, the lesser of (A) the present value, discounted in accordance with GAAP at the interest rate implicit in the related lease, of the obligations of the lessee for net rental payments over the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor, be extended) and (B) the fair market value of the assets subject to such transaction.

"**Audited Financial Statements**" means the audited balance sheet of the Borrower for the fiscal year ended December 27, 2009, and the related statements of income, shareholders' equity and cash flows for such fiscal year of the Borrower, including the notes thereto.

"**Avoidance Actions**" means claims and causes of action under sections 502(d), 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code.

"**Bank Secrecy Act**" means the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970, 31 U.S.C. 1051 et seq., as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

"**Bankruptcy Code**" means title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Cases from time to time.

"**Bankruptcy Law**" means the Bankruptcy Code and all other liquidation, receivership, moratorium, conservatorship, assignment for the benefit of creditors, insolvency or similar federal, state or foreign law for the relief of debtors.

"**Base Rate**" means, for any day, a fluctuating rate per annum equal to the highest of (i) the Federal Funds Rate plus ½ of 1% and (ii) the Prime Rate in effect for such day and (iii) the

Eurodollar Rate for a one-month Interest Period plus 100 basis points. For purposes hereof, "**Prime Rate**" means, for any day, a rate of interest equal to the highest rate published on the day of determination (or most recently prior thereto) in the "Money Rates" section of The Wall Street Journal (Eastern edition) as the Prime Rate in the United States for such day (or, if such source is not available, such alternate source as determined by the Administrative Agent). Any change in the Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate shall be effective as of the opening of business on the effective day of such change in the Prime Rate, the Federal Funds Rate or the Eurodollar Rate, respectively.

"**Base Rate Loan**" means a Loan that bears interest based on the Base Rate.

"**Borrower**" has the meaning assigned to such term in the preamble hereto.

"**Borrower Materials**" has the meaning specified in Section 6.02.

"**Borrowing**" has the meaning specified in Section 1.06.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located, except that if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, or the Interest Period for, a Eurodollar Loan, or a notice by the Borrower with respect to any such borrowing, payment, prepayment or Interest Period, such day shall also be a day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"**Capital Lease**" of any Person means any lease of (or other arrangement conveying the right to use) property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"**Capital Lease Obligations**" means, with respect to any Person, all obligations of such Person as lessee under Capital Leases, in each case taken at the amount thereof accounted for as liabilities in accordance with GAAP.

"**Carve-Out**" has the meaning specified in Section 2.16.

"**Carve-Out Account**" has the meaning specified in Section 2.16.

"**Carve-Out Cap**" has the meaning specified in Section 2.16.

"**Carve-Out Notice**" has the meaning specified in Section 2.16.

"**Case**" or "**Cases**" has the meaning specified in the recitals.

"**Cash Equivalents**" means:

(i) any evidence of debt, maturing not more than one year after such time, issued or guaranteed by the United States of America or any agency thereof;

(ii) commercial paper, maturing not more than one year from the date of issue, or demand notes issued by any domestic corporation not an Affiliate of the Borrower, in each case (unless issued by a Lender of its holding company) rated at least A-2 by S&P or P-2 by Moody's;

(iii) any certificate of deposit (or time deposits represented by such certificate of deposit), eurodollar time deposit or bankers' acceptance, maturing not more than one year after such time, or overnight Federal funds transactions with a member of the Federal Reserve System that are issued or sold by a commercial banking institution that is organized under the Laws of the United States, any State thereof or the District of Columbia, any foreign bank or its branches or agencies (fully protected against currency fluctuations) and has a combined capital and surplus and undivided profits of not less than $500,000,000;

(iv) any repurchase agreement entered into with any Lender (or other commercial banking institution of the stature referred to in clause (iii) above) which (A) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (i) through (iii) above and (B) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such Lender (or other commercial banking institution) thereunder;

(v) investments in short-term asset management accounts offered by any Lender (or other commercial banking institution of the stature referred to in clause (iii) above) for the purpose of investing in loans to any corporation (other than the Borrower or an Affiliate of the Borrower), state or municipality, in each case organized under the laws of any state of the United States or of the District of Columbia;

(vi) investments in securities with maturities of six months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least "A" by S&P or Moody's; and

(vii) shares of any money market fund that (A) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) through (vi) above, (B) has net assets in excess of $500,000,000 and (C) is rated at least "A-1" by S&P or "P-1" by Moody's.

"**Casualty**" means any casualty, damage, destruction or other similar loss with respect to real or personal property or improvements.

"**Casualty Insurance Policy**" means any insurance policy maintained by any Group Company covering losses with respect to Casualties.

"**CFS**" means Cantor Fitzgerald Securities.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (i) the adoption or taking effect of any law, rule, regulation or treaty; (ii) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (iii) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. Notwithstanding the foregoing, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directives promulgated thereunder, shall be deemed to have been introduced or adopted after the Closing Date, regardless of the date enacted or adopted.

"**Change of Control**" means the occurrence of any of the following events:

(i) (A) Holdings shall cease to beneficially own, directly or indirectly, 100% of the Equity Interests in the Borrower on a fully-diluted basis assuming the conversion and exercise of all outstanding Equity Equivalents (whether or not such securities are then currently convertible or exercisable), (B) the Sponsor Group shall beneficially own, directly or indirectly, less than a majority of the Equity Interests of Holdings entitled to vote for the election of directors thereof or (C) a majority of the seats (other than vacant seats) on the board of directors of Holdings or the Borrower shall at any time be occupied by Persons who were not (A) nominated by the board of directors (or any committee thereof authorized to make such nominations) of Holdings or the Borrower, as applicable, or the Sponsor Group, (B) appointed by directors so nominated or (C) appointed by the Sponsor Group; or

(ii) a "change of control" (as defined in the Pre-Petition Senior Notes Indenture, the Pre-Petition First Lien Credit Agreement or the Pre-Petition Second Lien Credit Agreement) occurs (other than any such "change of contol" triggered solely by a change to the composition of the board of directors of Holdings or the Borrower).

For purposes of this definition, a "beneficial owner" of a security includes any person who, directly or indirectly, whether by contract or otherwise, has the power to vote or direct the voting of, such security or the power to dispose, or direct the disposition of, such security, and "beneficially owned" shall have a correlative meaning.

"**Closing Date**" means the date on or after the Effective Date when the first Credit Extension occurs in accordance with Section 4.01.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means all of the property that is subject or is purported to be subject to the Liens granted by the Collateral Documents, the Interim Order or the Final Order.

"**Collateral Agent**" means CFS, in its capacity as collateral agent for the Lenders under the Collateral Documents, and its successor or successors in such capacity.

"**Collateral Documents**" means, collectively, the Security Agreement, the Pledge Agreement, any Additional Collateral Documents, any additional pledges, security agreements, patent, trademark or copyright filings or mortgages or deeds of trust required to be delivered pursuant to the Loan Documents and any instruments of assignment, control agreements, lockbox letters or other similar instruments or agreements executed pursuant to the foregoing.

"**Commitment**" means, with respect to any Lender, the commitment of such Lender, in an aggregate principal amount equal to such Lender's Applicable Percentage of the Total Committed Amount, to make Term Loans (including the Initial Term Loan, the Second Term Loan and the Delayed Draw Term Loans) in accordance with the provisions of Section 2.01(b), as set forth on Schedule 2.01 or in the applicable Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as its Commitment, as such amount may be adjusted from time to time in accordance with this Agreement.

"**Commitment Fee**" has the meaning specified in Section 2.11(a).

"**Committee**" has the meaning specified in Section 2.16.

"**Competitor**" means a Person whose primary business competes directly with the Borrower and its Subsidiaries.

"**Condemnation**" means any taking by a Governmental Authority of property or assets, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation.

"**Condemnation Award**" means all proceeds of any Condemnation or transfer in lieu thereof.

"**Confirmation Order**" means an order of the Bankruptcy Court confirming an Acceptable Plan of Reorganization.

"**Consolidated Capital Expenditures**" means for any period the aggregate amount of all expenditures (whether paid in cash, through the incurrence of Indebtedness or Attributable Debt or other consideration or accrued as a liability) that would, in accordance with GAAP, be included as additions to property, plant and equipment and other capital expenditures of Holdings and its Consolidated Subsidiaries for such period, excluding interest capitalized during construction, as the same are or would be set forth in a consolidated statement of cash flows of Holdings and its Consolidated Subsidiaries for such period, but excluding (to the extent that they would otherwise be included):

(i) any such expenditures made for the replacement or restoration of assets to the extent paid for by any Casualty Insurance Policy or Condemnation Award with respect to the asset or assets being replaced or restored to the extent such expenditures are permitted under the Loan Documents;

(ii) [reserved];

(iii) any such expenditures to the extent Holdings or any of its Consolidated Subsidiaries has received reimbursement in cash from a third party other than Holdings or one or more of its Consolidated Subsidiaries and for which none of Holdings or any of its Consolidated Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such third party or any other Person;

(iv) the book value of any asset owned by Holdings or a Consolidated Subsidiary prior to or during such period which is included as an addition to property, plant and equipment or other capital expenditures of Holdings and its Consolidated Subsidiaries for such period as a result of one or more of them reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period except that, for purposes of this clause (iv), (A) any expenditure necessary in order to permit such asset to be reused shall be included as Consolidated Capital Expenditures during the period that such expenditure is actually made and (B) such book value shall have been included in consolidated Capital Expenditures when such asset was originally acquired;

(v) the purchase price of equipment purchased during such period to the extent the consideration therefor consists of any combination of (A) used or surplus equipment traded in at the time of such purchase and (B) the proceeds of a concurrent sale of used or surplus equipment, in each case in the ordinary course of business;

(vi) any expenditures made with the proceeds of a Debt Issuance of Holdings or any of its Subsidiaries (other than the Term Loans and Indebtedness incurred pursuant to Section 7.01(n) after the Closing Date) to the extent not required to prepay the Loans or used for any other purpose; and

(vii) the purchase price of assets (other than cash and Cash Equivalents) that are purchased substantially contemporaneously with the trade-in of existing assets (other than cash and Cash Equivalents) to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets (other than cash and Cash Equivalents) for the assets (other than cash and Cash Equivalents) being traded in at such time.

"**Consolidated Subsidiary**" means, with respect to any Person, at any date any Subsidiary of such Person or other entity the accounts of which would be consolidated with those

of such Person in its consolidated financial statements if such statements were prepared as of such date in accordance with GAAP.

"**Consummation Date**" means, with respect to any Reorganization Plan, the date of the substantial consummation (as defined in section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) thereof.

"**Contractual Obligation**" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

"**Credit Exposure**" means, as applied to each Lender, the sum of the principal balance of the outstanding Term Loans of such Lender *plus* its Applicable Percentage of the outstanding Commitments (if any).

"**Credit Extension**" means a Borrowing.

"**Debt Equivalents**" of any Person means (i) any Equity Interest of such Person which by its terms (or by the terms of any security for which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or otherwise (including an event which would constitute a Change of Control), (A) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund or otherwise or (B) is convertible into or exchangeable for Indebtedness or Debt Equivalents, in each case in whole or in part, on or prior to the 91st-day following the Maturity Date and (ii) if such Person is a Subsidiary of the Borrower but not a Subsidiary Guarantor, any Preferred Stock of such Person; *provided*, *however*, that any Equity Interests that would not constitute Debt Equivalents but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests are convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a Change of Control or an Asset Disposition occurring prior to the 180th day after the Maturity Date shall not constitute Debt Equivalents if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the payment in full of the Senior Credit Obligations (other than contingent indemnity obligations).

"**Debt Issuance**" means the issuance by any Group Company of any Indebtedness.

"**Default**" means any condition or event that constitutes an Event of Default or that, with the giving of notice, the passage of applicable grace periods, or both, would be an Event of Default.

"**Default Rate**" means, when used with respect to Senior Credit Obligations, an interest rate equal to (A) the Base Rate plus (B) the Applicable Margin applicable to Base Rate Loans plus (C) 2.00% per annum; *provided, however*, that with respect to a Eurodollar Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such Loan plus 2.00% per annum.

"**Defaulting Lender**" means any Lender with an outstanding Commitment that (i) has failed to make a Term Loan required pursuant to the terms of this Agreement within one Business Day of the date required to be funded by it hereunder, (ii) has otherwise failed to pay to the Administrative Agent or any Lender any other amount required to be paid by it hereunder or any other Loan Document within one Business Day of the date when due, unless the subject of a good faith dispute or (iii) has been deemed insolvent or become the subject of a bankruptcy or insolvency proceeding.

"**Delayed Draw Availability Period**" means the period from and including the Second Funding Date to the Termination Date.

"**Delayed Draw Term Loan**" means a Term Loan made pursuant to Section 2.01(b)(iii).

"**Delayed Draw Term Loan Committed Amount**" means Commitments in an aggregate amount equal to $15,000,000.

"**Deposit Account**" has the meaning specified in the Security Agreement.

"**Discharge of Senior Credit Obligations**" means (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of the Cases, whether or not a claim for such interest is, or would be, allowed in the Cases) and premium, if any, on all Indebtedness outstanding under the Loan Documents and termination of all commitments to lend or otherwise extend credit under the Loan Documents and (ii) payment in full in cash of all other Senior Credit Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of the Cases, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in the Cases).

"**Disclosure Statement**" means any disclosure statement filed in any of the Cases.

"**Disqualified Stock**" means, with respect to any Person, any Equity Interest which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event: (1) matures or is mandatorily redeemable (other than redeemable only for Equity Interest of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise; (2) is convertible or exchangeable at the option of the holder for Indebtedness or Disqualified Stock; or (3) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise in whole or in part; in each case on or prior to the Maturity Date; *provided, however*, that any

Equity Interest that would not constitute Disqualified Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interest is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interest upon the occurrence of a change in control or an asset sale occurring prior to the 180th day after the Maturity Date shall not constitute Disqualified Stock if such Equity Interest provides that the issuer thereof will not redeem any such Equity Interest pursuant to such provisions prior to the repayment in full of the Senior Credit Obligations (other than contingent indemnity obligations).

"**Dollars**" and "**$**" means lawful money of the United States of America.

"**Domestic Subsidiary**" means with respect to any Person each Subsidiary of such Person that is organized under the laws of the United States, the District of Columbia or any State, and "**Domestic Subsidiaries**" means any two or more of them.

"**Effective Date**" means the date this Agreement becomes effective in accordance with Section 10.10.

"**Eligible Assignee**" means (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any other Person (other than a natural person and other than a Competitor) approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed); *provided* that notwithstanding the foregoing, "Eligible Assignee" shall not include Holdings, the Borrower or any of Holdings' or the Borrower's Affiliates or Subsidiaries or Competitors.

"**Employee Benefit Arrangements**" means in any jurisdiction the benefit schemes or arrangements in respect of any employees or past employees operated by any Group Company or in which any Group Company participates and which provide benefits on retirement, ill-health, injury, death or voluntary withdrawal from or termination of employment, including termination indemnity payments and life assurance and post-retirement medical benefits, other than Plans and Foreign Pension Plans.

"**Environmental Laws**" means any and all Federal, state, local, and foreign statutes, Laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"**Environmental Liability**" means any liability, contingent or otherwise (including any liability for damages, costs of remediation, fines, penalties or indemnities), of any Group Company directly or indirectly resulting from or based on (i) violation of any Environmental Law, (ii) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Material, (iii) exposure to any Hazardous Material, (iv) the release or threatened

release of any Hazardous Material into the environment or (v) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"**Equity Commitment Agreement**" means the Equity Commitment Agreement, dated as of April 3, 2011, by and among Holdings, the Borrower, the Subsidiaries of the Borrower party thereto and the backstop parties referred to therein.

"**Equity Equivalents**" means with respect to any Person any rights, warrants, options, convertible securities, exchangeable securities, indebtedness or other rights, in each case exercisable for or convertible or exchangeable into, directly or indirectly, Equity Interests of such Person or securities exercisable for or convertible or exchangeable into Equity Interests of such Person, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

"**Equity Interests**" means all shares of capital stock, partnership interests (whether general or limited), limited liability company membership interests, beneficial interests in a trust and any other interest or participation that confers on a Person the right to receive a share of profits or losses, or distributions of assets, of an issuing Person, but excluding any debt securities convertible into such Equity Interests.

"**Equity Issuance**" means (i) any sale or issuance by any Group Company to any Person other than Holdings or a Subsidiary of Holdings of any Equity Interests or any Equity Equivalents (other than any such Equity Equivalents that constitute Indebtedness) and (ii) the receipt by any Group Company of any cash capital contributions, whether or not paid in connection with any issuance of Equity Interests of any Group Company, from any Person other than Holdings or a Subsidiary of Holdings.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulation promulgated thereunder.

"**ERISA Affiliate**" means each entity that is a member of a "controlled group of corporations," under "common control" or an "affiliated service group" with a Group Company within the meaning of Section 414(b), (c) or (m) of the Code, or required to be aggregated with a Group Company under Section 414(o) of the Code or is under "common control" with a Group Company, within the meaning of Section 4001(a)(14) of ERISA.

"**ERISA Event**" means:

(i) a reportable event as defined in Section 4043 of ERISA and the regulations issued under such Section with respect to a Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event;

(ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of any Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days;

(iii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Plan (whether or not waived in accordance with Section 412(d) of the Code), the application for a minimum funding waiver under Section 303 of ERISA (or for years to which the Pension Protection Act of 2006 (the "**PPA**") applies, Section 302(c) of ERISA) with respect to any Plan, the failure to make by its due date a required installment under Section 412(m) of the Code (or for years to which the PPA applies, Section 430(j) of the Code) with respect to any Plan or the failure to make any required contribution to a Multiemployer Plan;

(iv) (A) the incurrence of any material liability by a Group Company pursuant to Title I of ERISA or to the penalty or excise tax provisions of the Code relating to employee benefit plans (as defined in Section 3 of ERISA), or the occurrence or existence of any event, transaction or condition that could reasonably be expected to result in the incurrence of any such material liability by a Group Company pursuant to Title I of ERISA or to such penalty or excise tax provisions of the Code; or (B) the incurrence of any material liability by a Group Company or an ERISA Affiliate pursuant to Title IV of ERISA or the occurrence or existence of any event, transaction or condition that could reasonably be expected to result in the incurrence of any such material liability or imposition of any Lien on any of the rights, properties or assets of a Group Company or any ERISA Affiliate pursuant to Title IV of ERISA or to Section 401(a)(29) or 412 of the Code (or for years to which the PPA applies, Section 430(k) of the Code);

(v) the provision by the administrator of any Plan of a notice pursuant to Section 4041(a)(2) of ERISA (or the reasonable expectation of such provision of notice) of intent to terminate such Plan in a distress termination described in Section 4041(c) of ERISA, the institution by the PBGC of proceedings to terminate any Plan or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of a Plan by the PBGC, or the appointment of a trustee by the PBGC to administer any Plan;

(vi) the withdrawal of a Group Company or ERISA Affiliate in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential material liability therefor, or the receipt by a Group Company or ERISA Affiliate of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA;

(vii) the imposition of material liability (or the reasonable expectation thereof) on a Group Company or ERISA Affiliate pursuant to Section 4062, 4063, 4064 or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA;

(viii) the assertion of a material claim (other than routine claims for benefits) against any Plan other than a Multiemployer Plan or the assets thereof, or against a Group Company or, with respect to a Plan subject to Title IV of ERISA, an ERISA Affiliate, in connection with any Plan;

(ix) the receipt from the United States Internal Revenue Service of notice of the failure of any Plan (or any Employee Benefit Arrangement intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Plan to qualify for exemption from taxation under Section 501(a) of the Code and, with respect to Multiemployer Plans, notice thereof to any Group Company; and

(x) the establishment or amendment by a Group Company of any Welfare Plan that provides post-employment welfare benefits in a manner that would reasonably be expected to result in a Material Adverse Effect.

"**Eurodollar Loan**" means, at any date, a Loan which bears interest at a rate based on the Eurodollar Rate.

"**Eurodollar Rate**" means, for any Interest Period with respect to any Eurodollar Loan, the rate per annum equal to British Bankers Association LIBOR Rate ("**BBA LIBOR**"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by the Administrative Agent from time to time), at approximately 11:00 A.M. (London time) two Business Days prior to the commencement of such Interest Period for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "Eurodollar Rate" for such Interest Period shall be the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted by CFS and with a term equivalent to such Interest Period would be offered by CFS's principal London branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 A.M. (London time) two Business Days prior to the commencement of such Interest Period. Notwithstanding any provision to the contrary herein the Eurodollar Rate shall not be less than 1.75%.

"**Eurodollar Reserve Percentage**" means for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any other entity succeeding to the functions currently performed thereby) 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"). The Adjusted Eurodollar Rate for each outstanding Eurodollar Loan shall be adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage.

"**Event of Default**" has the meaning specified in Section 8.01.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Excluded Taxes**" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (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 a jurisdiction (or any political subdivision thereof) as a result of such recipient being organized or having its principal office in such jurisdiction or, in the case of any Lender, in having its Lending Office in such jurisdiction, (ii) any branch profits taxes under Section 884 of the Code or similar taxes imposed by a jurisdiction in which the Lender is located and (iii) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 10.13 or a participant under Section 2.13), any U.S. federal withholding tax (A) that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 3.01 or (B) is attributable to such Foreign Lender's failure to comply with Section 3.01(e).

"**Exempt Deposit Accounts**" means (i) deposit accounts the balance of which consists exclusively of (A) withheld income taxes and federal, state or local employment taxes in such amounts as are required in the reasonable judgment of the Borrower to be paid to the Internal Revenue Service or state or local government agencies within the following two months with respect to employees of any of the Loan Parties and (B) amounts required to be paid over to an employee benefit plan pursuant to DOL Reg. Sec. 2510.3-102 on behalf of or for the benefit of employees of one or more Loan Parties, (ii) all segregated Deposit Accounts constituting (and the balance of which consists solely of funds set aside in connection with) taxes accounts, payroll accounts, fiduciary benefits and trust accounts, (iii) local depository accounts, and (iv) other deposit accounts the aggregate balance of which is less than $250,000.

"**Failed Loan**" has the meaning specified in Section 2.03(d).

"**Federal Funds Rate**" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such

transactions on the next preceding Business Day as so published on the next succeeding Business Day.

"**Fee Letter**" means the Fee Letter dated April 4, 2011 between the Borrower and CFS, as amended, modified or supplemented from time to time.

"**Final Order**" means a final order of the Bankruptcy Court, reasonably satisfactory in form and substance to the Lead Arranger, entered by the Bankruptcy Court (a) authorizing on a final basis the borrowing of Initial Term Loans in the full amount of the Initial Term Loan Committed Amount, (b) approving the transactions contemplated by this Agreement, (c) granting the Superpriority Claims and liens in Section 2.16 and (d) covering other customary matters.

"**Foreign Cash Equivalents**" means:

(i) securities issued or fully guaranteed by the United Kingdom or any instrumentality thereof (as long as that the full faith and credit of the United Kingdom is pledged in support of those securities);

(ii) certificates of deposit, eurodollar or UK Sterling time deposits, overnight bank deposits and bankers' acceptances of any foreign bank, or its branches or agencies (fully protected against currency fluctuations) that, at the time of acquisition, are rated at least "A-1" by S&P or "P-1" by Moody's, and (ii) certificates of deposit, eurodollar time deposits, banker's acceptances and overnight bank deposits, in each case of any non-U.S. commercial bank having capital and surplus in excess of $500,000,000 and a Thomson BankWatch Rating of at least "B";

(iii) repurchase obligations with a term of not more than seven days with respect to securities of the types described in clause (i) or (ii) with a bank or trust company (including any of the Lenders) or recognized securities dealer having capital and surplus in excess of $500,000,000 in which the Borrower or one or more of its Subsidiaries shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations; and

(iv) investments, classified in accordance with GAAP as current assets, in shares of any money market fund that has all or substantially all of its assets invested continuously in the types of investments referred to in clauses (i) through (iii) above which are administered by reputable financial institutions having capital of at least $500,000,000; p*rovided, however,* that the maturities of all obligations of the type specified in clauses (i) through (iii) above shall not exceed the lesser of the time specified in such clauses.

"**Foreign Lender**" means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is a resident for tax purposes. For purposes of this

definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"**Foreign Pension Plan**" means any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by any Group Company primarily for the benefit of employees of any Group Company residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code, not including plans, funds or other similar programs which require employee participation pursuant to applicable law.

"**Foreign Subsidiary**" means with respect to any Person any Subsidiary of such Person that is not a Domestic Subsidiary of such Person.

"**Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"**GAAP**" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination.

"**Governmental Authority**" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Group**" means at any time a group of Loans consisting of (i) all Loans which are Base Rate Loans at such time or (ii) all Loans which are Eurodollar Loans having the same Interest Period at such time; *provided* that, if a Loan of any particular Lender is converted to or made as a Base Rate Loan pursuant to Article 3, such Loan shall be included in the same Group or Group of Loans from time to time as it would have been had it not been so converted or made.

"**Group Company**" means any of Holdings, the Borrower and the Borrower's Subsidiaries (regardless of whether or not such Subsidiaries are consolidated with the Borrower for purposes of GAAP), and "**Group Companies**" means all of them, collectively.

"**Guaranty**" means the Guaranty, substantially in the form of Exhibit F hereto, by Holdings and the Subsidiary Guarantors in favor of the Administrative Agent, as the same may be amended, modified or supplemented from time to time.

"**Guaranty Obligation**" means, with respect to any Person, without duplication, any obligation (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guarantying, intended to guaranty, or having the economic effect of guarantying, any Indebtedness of any other Person in any manner, whether direct or indirect, and including, without limitation, any obligation, whether or not contingent, (i) to purchase any such Indebtedness or any property constituting security therefor, (ii) to advance or provide funds or other credit support for the payment or purchase of such Indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, support agreements, comfort letters, take or pay arrangements, put agreements, performance guaranties or similar agreements or arrangements) for the benefit of the holder of Indebtedness of such other Person, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Indebtedness or (iv) to otherwise assure or hold harmless the owner of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants or environmental contaminants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and all other substances or wastes regulated pursuant to any Environment Law because of their hazardous or deleterious properties.

"**Holdings**" means Sbarro Holdings, LLC, a Delaware limited liability company, and its successors.

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(i) all obligations of such Person for borrowed money;

(ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(iii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(iv) all obligations, other than intercompany items, of such Person to pay the deferred purchase price of property or services (other than trade accounts payable and accrued expenses arising in the ordinary course of business and due within six months of the incurrence thereof);

(v) the Attributable Indebtedness of such Person in respect of Capital Lease Obligations, Sale/Leaseback Transactions and Synthetic Lease Obligations (regardless of whether accounted for as indebtedness under GAAP);

(vi) all obligations, contingent or otherwise, of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, letter of guaranty, bankers' acceptance, surety bond, performance bond or similar instrument;

(vii) all obligations of the types specified in clauses (i) through (vi) above of others secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not such obligation is assumed by such Person; *provided* that the amount of any Indebtedness of others that constitutes Indebtedness of such Person solely by reason of this clause (vii) shall not for purposes of this Agreement exceed the greater of the book value or the fair market value of the properties or assets subject to such Lien;

(viii) all Guaranty Obligations of such Person;

(ix) all Debt Equivalents of such Person; and

(x) the Indebtedness of any other Person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person would be liable therefor under applicable Law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person shall not be liable therefor;

provided that (i) Indebtedness shall not include (A) deferred compensation arrangements, (B) earn-out obligations until matured or earned and not paid and reflected on the balance sheet as a liability and (C) deemed Indebtedness pursuant to FASB 133 or 150, and (ii) the amount of any Limited Recourse Indebtedness of any Person shall be equal to the lesser of (A) the aggregate principal amount of such Limited Recourse Indebtedness for which such Person provides credit support of any kind (including any undertaking agreement or instrument that would constitute Indebtedness), is directly or indirectly liable as a guarantor or otherwise or is the lender and (B) the fair market value of any assets securing such Indebtedness or to which such Indebtedness is otherwise recourse.

"**Indemnified Taxes**" means Taxes other than Excluded Taxes.

"**Indemnitees**" has the meaning specified in Section 10.04(b).

"**Information**" has the meaning specified in Section 10.07.

"**Initial Approved Budget**" means a detailed forecast of receipts and disbursements over a 13-week period for the Loan Parties in form and substance reasonably acceptable to the Administrative Agent, which shall initially be dated as of a date not more than 7 days prior to the Petition Date and cover the 13 weeks commencing with the week that includes the Petition Date.

"**Initial Term Loan**" means a Term Loan made pursuant to Section 2.01(b)(i).

"**Initial Term Loan Committed Amount**" means Commitments in an aggregate amount equal to $16,500,000.

"**Insolvency or Liquidation Proceeding**" means (i) any voluntary or involuntary case or proceeding (including the Cases) under the Bankruptcy Code or any other Bankruptcy Law with respect to any Loan Party, (ii) any other voluntary or involuntary insolvency, reorganization or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding with respect to any Loan Party or with respect to a material portion of their respective assets, (iii) any liquidation, dissolution, reorganization or winding up of any Loan Party whether voluntary or involuntary and whether or not involving insolvency or bankruptcy or (iv) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of any Loan Party.

"**Insurance Proceeds**" means all insurance proceeds (other than business interruption insurance proceeds), damages, awards, claims and rights of action with respect to any Casualty.

"**Intercompany Note**" means a promissory note contemplated by Section 7.06(a)(x) or (xi), substantially in the form of Exhibit H hereto, and "**Intercompany Notes**" means any two or more of them.

"**Interest Payment Date**" means (i) as to Base Rate Loans, the last Business Day of each month, commencing April 30, 2011, and the Termination Date and (ii) as to Eurodollar Loans, the last day of each applicable Interest Period and the Termination Date.

"**Interest Period**" means with respect to each Eurodollar Loan, a period commencing on the date of borrowing specified in the applicable Notice of Borrowing or on the date specified in the applicable Notice of Extension/Conversion and ending one, two or three months thereafter, as the Borrower may elect in the applicable notice; *provided* that:

(i) any Interest Period which would otherwise end on a day which is not a Business Day shall, subject to clause (v) below, be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period which begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month;

(iii) [reserved];

(iv) if so provided in a written notice to the Borrower by the Administrative Agent at the direction of the Required Lenders, no Interest Period in excess of one month may be selected at any time when an Event of Default is then in existence; and

(v) no Interest Period may be selected which would end after the Maturity Date.

"**Interim Order**" means an interim order of the Bankruptcy Court, reasonably satisfactory in form and substance to the Lead Arranger entered by the Bankruptcy Court, with the consent or non-objection of a preponderance (as determined by the Lead Arranger in its sole discretion) of the Pre-Petition First Lien Lenders (a) authorizing the borrowing of the Initial Term Loans in the full amount of the Initial Term Loan Committed Amount, (b) approving the transactions contemplated by this Agreement, (c) granting the Superpriority Claims and liens in Section 2.16 and (d) covering other customary matters.

"**Investment**" in any Person means (i) the acquisition (whether for cash, property, services, assumption of Indebtedness, securities or otherwise) of assets (other than inventory, machinery, equipment, capital expenditures and other assets in the ordinary course of business), Equity Interests, Equity Equivalents, Debt Equivalents, Indebtedness or other securities of such Person, (ii) any deposit with, or advance, loan or other extension of credit to or for the benefit of such Person (other than deposits made in connection with Operating Leases or the purchase of equipment or inventory, each in the ordinary course of business) or (iii) any other capital contribution to such Person, including by way of Guaranty Obligations of such Person, any support for a letter of credit issued on behalf of such Person incurred for the benefit of such Person. For the purposes of Article 7, the outstanding amount of any Investment by any Person in another Person shall be calculated as the excess of (i) the initial amount of such Investment (including the fair market value of all property transferred by such Person as part of such Investment) over (ii) the sum of (A) all returns of principal or capital thereof received by the investing Person on or prior to such time (including returns of principal or capital in the form of cash dividends, cash distributions and cash repayments of Indebtedness) and (B) all liabilities of the investing Person constituting all or a part of the initial amount of such Investment expressly transferred prior to such time in connection with the sale or disposition of such Investment, but only to the extent the investing Person is fully released of such liabilities by such transfer.

"**Judgment Currency**" has the meaning specified in Section 10.18.

"**Judgment Currency Conversion Date**" has the meaning specified in Section 10.18.

"**Laws**" means, collectively, all applicable international, foreign, Federal (including, without limitation, the Bankruptcy Code), state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directives, licenses, authorizations and permits of any Governmental Authority.

"**Lead Arranger**" means CFS.

"**Lender**" means each bank or other lending institution listed on Schedule 2.01 and each Eligible Assignee that becomes a Lender pursuant to Section 10.06(b) and their respective successors.

"**Lending Office**" means, with respect to any Lender and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in such Lender's Administrative Questionnaire or in any applicable Assignment and Assumption pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

"**Lien**" means any security interest, mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to Real Property, and any financing lease having substantially the same economic effect as any of the foregoing). Solely for the avoidance of doubt, the filing of a UCC financing statement that is a protective lease filing in respect of an operating lease that does not constitute a security interest in the leased property or otherwise give rise to a Lien does not constitute a Lien solely on account of being filed in a public office.

"**Limited Recourse Indebtedness**" means with respect to any Person, Indebtedness to the extent: (i) such Person (A) provides no credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (B) is not directly or indirectly liable as a guarantor or otherwise or (C) does not constitute the lender; and (ii) no default with respect thereto would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the Loans or the Notes) of such Person to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

"**Liquidity**" means, at any time, the sum of (x) the aggregate amount of unrestricted (other than Liens under the Loan Documents and the Liens securing the Pre-Petition First Lien Credit Agreement and the Pre-Petition Second Lien Credit Agreement) cash and Cash

Equivalents of the Loan Parties at such time, *plus* (y) the aggregate amount of the unused Commitments at such time.

"**Loan**" means an Initial Term Loan, a Second Term Loan or a Delayed Draw Term Loan (or a portion of any Initial Term Loans, Second Term Loans or Delayed Draw Term Loans), individually or collectively as appropriate; *provided* that, if any such loan or loans (or portions thereof) are combined or subdivided pursuant to a Notice of Extension/Conversion, the term "**Loan**" shall refer to the combined principal amount resulting from such combination or to each of the separate principal amounts resulting from such subdivision, as the case may be.

"**Loan Documents**" means this Agreement, the Notes, the Guaranty, the Collateral Documents and each Accession Agreement, collectively, in each case as the same may be amended, modified or supplemented from time to time, and all other related agreements and documents executed by a Loan Party in favor of, and delivered to, any Senior Credit Party in connection with or pursuant to any of the foregoing.

"**Loan Party**" means each of Holdings, the Borrower and each Subsidiary Guarantor, and "**Loan Parties**" means any combination of the foregoing.

"**Margin Stock**" means "margin stock" as such term is defined in Regulation U.

"**Material Adverse Effect**" means a material adverse change to the business, assets, liabilities, operations, results of operations, or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole, other than as customarily occurs as a result of events leading up to and following the commencement of a proceeding under chapter 11 of the Bankruptcy Code and the commencement of the Cases and the continuation and prosecution thereof.

"**Maturity Date**" means the date that is six months after the Closing Date; *provided* that (i) such date is subject to extension pursuant to Section 2.15 and (ii) if such date is not a Business Day, the Maturity Date shall be the immediately following Business Day.

"**Maximum Rate**" has the meaning specified in Section 10.09.

"**Moody's**" means Moody's Investors Service, Inc., a Delaware corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

"**Multiemployer Plan**" means a "multiemployer plan" as defined in Section 3(37) or 4001(a)(3) of ERISA.

"**Net Cash Proceeds**" means:

(i) with respect to any Asset Disposition (other than an Asset Disposition consisting of a lease where one or more Group Companies is acting as lessor entered into

in the ordinary course of business), Casualty or Condemnation, (A) the gross amount of all cash proceeds (including cash Insurance Proceeds and cash Condemnation Awards in the case of any Casualty or Condemnation, except to the extent and for so long as such Insurance Proceeds or Condemnation Awards constitute Reinvestment Funds) actually paid to or actually received by any Group Company in respect of such Asset Disposition, Casualty or Condemnation (including any cash proceeds received as income or other proceeds of any noncash proceeds of any Asset Disposition, Casualty or Condemnation as and when received), less (B) the sum of (1) the amount, if any, of all taxes (other than income taxes) and all income taxes (as estimated by a senior financial or accounting officer of Holdings and its Subsidiaries) and customary fees, legal fees, brokerage fees, commissions, costs and other expenses (other than those payable to any Group Company or to Affiliates of any Group Company) that are incurred in connection with such Asset Disposition, Casualty or Condemnation and are payable by any Group Company, but only to the extent not already deducted in arriving at the amount referred to in clause (i)(A) above, (2) appropriate amounts that must be set aside as a reserve in accordance with GAAP against any indemnities, liabilities (contingent or otherwise) associated with such Asset Disposition, Casualty or Condemnation, (3) if applicable, the amount of any Indebtedness secured by a Permitted Lien that has been repaid or refinanced in accordance with its terms with the proceeds of such Asset Disposition, Casualty or Condemnation and (4) any payments to be made by any Group Company as agreed between such Group Company and the purchaser of any assets subject to an Asset Disposition, Casualty or Condemnation in connection therewith; and

(ii) with respect to any Equity Issuance or Debt Issuance, the gross amount of cash proceeds paid to or received by any Group Company in respect of such Equity Issuance or Debt Issuance as the case may be (including cash proceeds subsequently as and when received at any time in respect of such Equity Issuance or Debt Issuance from non-cash consideration initially received or otherwise), net of underwriting discounts and commissions or placement fees, investment banking fees, legal fees, consulting fees, accounting fees and other customary fees and expenses directly incurred by any Group Company in connection therewith (other than those payable to any Group Company or any Affiliate of any Group Company).

"**Nominal Shares**" means (i) for any Subsidiary of the Borrower that is not a Domestic Subsidiary, nominal issuances of Equity Interests in an aggregate amount not to exceed 5.0% of the Equity Interests or Equity Equivalents of such Subsidiary on a fully-diluted basis and (ii) in any case, director's qualifying shares, in each case to the extent such issuances are required by applicable Laws.

"**Note**" means a Term Note, and "Notes" means any combination of the foregoing.

"**Notice of Borrowing**" means a request by the Borrower for a Borrowing, substantially in the form of Exhibit A-1 hereto.

"**Notice of Extension/Conversion**" has the meaning specified in Section 2.07.

"**Obligation Currency**" has the meaning specified in Section 10.18.

"**Operating Lease**" means, as applied to any Person, a lease (including leases which may be terminated by the lessee at any time) of any property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

"**Orders**" means the Interim Order and the Final Order.

"**Organization Documents**" means, (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-United States jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

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

"**Participant**" has the meaning specified in Section 10.06(d).

"**Participant Register**" has the meaning specified in Section 10.06(d).

"**PBGC**" means the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA or any entity succeeding to any or all of its functions under ERISA.

"**Perfection Certificate**" means with respect to any Loan Party a certificate, substantially in the form of Exhibit G-3 to this Agreement, completed and supplemented with the schedules and attachments contemplated thereby and duly executed on behalf of such Loan Party by a Responsible Officer of such Loan Party.

"**Permitted Joint Venture**" means a joint venture, in the form of a corporation, limited liability company, business trust, joint venture, association, company or partnership, entered into by the Borrower or any of its Subsidiaries which (i) is engaged in a line of business related, ancillary or complementary to those engaged in by the Borrower and its Subsidiaries and (ii) is formed or organized in a manner that limits the exposure of Holdings, the Borrower and its Subsidiaries for the liabilities thereof to (A) the Investments of the Borrower and its Subsidiaries

therein permitted under Section 7.06 and (B) any Indebtedness of any Permitted Joint Venture or any Guaranty Obligations by Holdings or any of its Subsidiaries in respect of such Indebtedness, which Indebtedness or Guaranty Obligations are permitted at the time under Section 7.01.

"**Permitted Liens**" has the meaning specified in Section 7.02.

"**Permitted Refinancing**" means, with respect to any Person, any modification, refinancing, refunding, renewal or extension of any Indebtedness of such Person; *provided* that (i) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so modified, refinanced, refunded, renewed or extended except by an amount equal to any interest capitalized in connection with, any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal or extension and by an amount equal to any existing commitments unutilized thereunder or as otherwise permitted pursuant to Section 7.01, (ii) such modification, refinancing, refunding, renewal or extension has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being modified, refinanced, refunded, renewed or extended, (iii) if the Indebtedness being modified, refinanced, refunded, renewed or extended is subordinated in right of payment to the Senior Credit Obligations, such modification, refinancing, refunding, renewal or extension is subordinated in right of payment to the Senior Credit Obligations on terms at least as favorable on the whole to the Lenders as those contained in the documentation governing the Indebtedness being modified, refinanced, refunded, renewed or extended, (iv) the terms and conditions (including, if applicable, as to collateral) of any such modified, refinanced, refunded, renewed or extended Indebtedness are not, taken as a whole, materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being modified, refinanced, refunded, renewed or extended, (v) such modification, refinancing, refunding, renewal or extension is incurred by the Person who is the obligor on the Indebtedness being modified, refinanced, refunded, renewed or extended, and (vi) at the time thereof, no Default shall have occurred and be continuing.

"**Permitted Subordinated Debt**" means unsecured Indebtedness that (x) does not require or permit the payment of interest in cash, (y) is subordinated to the Senior Credit Obligations on terms satisfactory to the Administrative Agent and (z) has a maturity date not earlier than, and does not require any mandatory prepayments prior to (except for any mandatory prepayments that are expressly subject to the prior payment in full of the Senior Credit Obligations), the Maturity Date (including as the Maturity Date may be extended pursuant to Section 2.15).

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Petition Date**" means April 4, 2011.

"**Plan**" means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code maintained by or contributed to by any Group Company or any ERISA Affiliate, including a Multiemployer Plan.

"**Plan Support Agreement**" means the Plan Support Agreement, dated as of April 3, 2011, by and among Holdings, the Borrower, the Subsidiaries of the Borrower party thereto, the Pre-Petition Second Lien Lenders party thereto, the Pre-Petition Senior Noteholders party thereto and the other Persons party thereto, including the Plan Term Sheet attached as Exhibit A thereto.

"**Platform**" has the meaning specified in Section 6.02.

"**Pledge Agreement**" means the Pledge Agreement, substantially in the form of Exhibit G-2 hereto, dated as of the date hereof among Holdings, the Borrower, the Subsidiary Guarantors and the Collateral Agent, as the same may be amended, modified or supplemented from time to time.

"**Pledged Collateral**" means the "Collateral" as defined in the Pledge Agreement.

"**PPA**" has the meaning assigned to such term in the definition of "ERISA Event"

"**Preferred Stock**" means, as applied to the Equity Interests of a Person, Equity Interests of any class or classes (however designated) which is preferred as to the payment of dividends or distributions, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over the Equity Interests of any other class of such Person.

"**Pre-Petition First Lien Collateral Agent**" means "Collateral Agent" as defined in the Pre-Petition First Lien Credit Agreement.

"**Pre-Petition First Lien Credit Agreement**" has the meaning specified in the recitals.

"**Pre-Petition First Lien Credit Obligations**" means "Senior Credit Obligations" as defined in the Pre-Petition First Lien Credit Agreement.

"**Pre-Petition First Lien Lenders**" means "Lenders" as defined in the Pre-Petition First Lien Credit Agreement.

"**Pre-Petition First Lien Loan Documents**" means the "Loan Documents" as defined in the Pre-Petition First Lien Credit Agreement.

"**Pre-Petition Indebtedness**" has the meaning specified in Section 7.01(a).

"**Pre-Petition Lenders**" means, collectively, the Pre-Petition First Lien Lenders and the Pre-Petition Second Lien Lenders.

"**Pre-Petition Payment**" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Pre-Petition Indebtedness or trade payables (including, without limitation, in respect of reclamation claims) or other pre-petition claims against Holdings, the Borrower or any Subsidiary Guarantor.

"**Pre-Petition Registration Rights Agreement**" means the Registration Rights Agreement dated as of January 31, 2007 among the Borrower, the Subsidiary Guarantors, Credit Suisse Securities (USA) LLC and Bank of America Securities LLC, relating to the Pre-Petition Senior Notes, as amended, modified, restated or otherwise modified from time to time.

"**Pre-Petition Second Lien Collateral Agent**" means "Collateral Agent" as defined in the Pre-Petition Second Lien Credit Agreement.

"**Pre-Petition Second Lien Credit Agreement**" means that certain Second Lien Credit Agreement, dated as of March 26, 2009, among Holdings, the Borrower, each of the lenders from time to time party thereto and Wilmington Trust FSB, as successor administrative agent and collateral agent, as amended, supplemented or otherwise modified prior to the Petition Date.

"**Pre-Petition Second Lien Credit Obligations**" means "Second Lien Credit Obligations" as defined in the Pre-Petition Second Lien Credit Agreement.

"**Pre-Petition Second Lien Lenders**" means "Lenders" as defined in the Pre-Petition Second Lien Credit Agreement.

"**Pre-Petition Second Lien Loan Documents**" means "Loan Documents" as defined in the Pre-Petition Second Lien Credit Agreement.

"**Pre-Petition Second Lien Transaction Documents**" means "Transaction Documents" as defined in the Pre-Petition Second Lien Credit Agreement.

"**Pre-Petition Senior Noteholders**" means the holders of the Pre-Petition Senior Notes.

"**Pre-Petition Senior Notes**" means the 10.375% Senior Notes due 2015 issued by the Borrower in aggregate principal amount of $150,000,000 issued and sold on January 31, 2007 pursuant to the Pre-Petition Senior Notes Documents and any notes exchanged therefor pursuant to the Pre-Petition Registration Rights Agreement, together with any notes issued in connection with a Permitted Refinancing of the Pre-Petition Senior Notes or any replacement notes issued in accordance with the terms of the Pre-Petition Senior Notes Indenture, in each case prior to the Petition Date.

"**Pre-Petition Senior Notes Documents**" means the Pre-Petition Senior Notes, the Pre-Petition Senior Notes Indenture, the guarantees of the Pre-Petition Senior Notes and all other agreements, instruments and other documents pursuant to which the Pre-Petition Senior Notes have been issued or otherwise setting forth the terms of the Pre-Petition Senior Notes.

"**Pre-Petition Senior Notes Indenture**" means the Indenture dated as of January 31, 2007 between the Borrowers, the guarantors party thereto and The Bank of New York, as trustee as in effect on the Petition Date.

"**Primed Liens**" has the meaning specified in Section 2.16(a).

"**Priming Liens**" has the meaning specified in Section 2.16(a).

"**Prime Rate**" has the meaning specified in the definition of "Base Rate".

"**Professional Fees**" has the meaning specified in Section 2.16.

"**Purchase Money Indebtedness**" means Indebtedness of the Borrower or any of its Subsidiaries incurred for the purpose of financing all or any part of the purchase price or cost of construction or improvement of property used in the business of the Borrower or such Subsidiary.

"**Real Property**" means, with respect to any Person, all of the right, title and interest of such Person in and to land, improvements and fixtures, including Leaseholds.

"**Register**" has the meaning specified in Section 10.06(c).

"**Registered Public Accounting Firm**" has the meaning specified in the Securities Laws and shall be independent of the Borrower as prescribed by the Securities Laws.

"**Regulation S-X**" shall mean Regulation S-X under the Securities Act of 1933, as amended.

"**Regulation T, U or X**" means Regulation T, U or X, respectively, of the Board of Governors of the Federal Reserve System as amended, or any successor regulation.

"**Reinvestment Funds**" means, with respect to any Net Cash Proceeds of Insurance Proceeds or any Condemnation Award in respect of the single event or series of related events giving rise thereto, that portion of such funds as shall, according to a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent within 30 days after the occurrence of the Casualty or Condemnation giving rise thereto, be reinvested within 365 days (or if the Borrower has entered into a commitment to apply such proceeds to a reinvestment within such time period to the extent such amounts are actually reinvested, within six months of the expiration of such 365 days) after the occurrence of the Casualty or Condemnation giving rise thereto in the repair, restoration or replacement of the properties that were the subject of such Casualty or Condemnation; *provided* that no Event of Default shall have occurred and be continuing on the date of such reinvestment notice or, if the Borrower or one or more of its Subsidiaries shall have then entered into one or more continuing agreements with a Person not an Affiliate of any of them for the repair, restoration or replacement of the properties that were the subject of such Casualty or Condemnation, none of the Administrative Agent or the Collateral Agent shall have commenced any action or proceeding to exercise or seek to exercise any right

or remedy with respect to any Collateral (including any action of foreclosure, enforcement, collection or execution or by any proceeding under any Insolvency or Liquidation Proceeding).

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"**Reorganization Plan**" means a plan or plans of reorganization filed in any of the Cases.

"**Required Pre-Petition First Lien Lenders**" means "Required Lenders" as defined in the Pre-Petition First Lien Credit Agreement.

"**Required Lenders**" means, at any date of determination, at least two Lenders whose aggregate Credit Exposure constitutes more than 50% of the Credit Exposure of all Lenders at such time; *provided*, *however*, that if any Lender shall be a Defaulting Lender at such time then there shall be excluded from the determination of Required Lenders such Lender and its Credit Exposure at such time.

"**Responsible Officer**" means the chief executive officer, president, senior vice president, vice president, chief financial officer, treasurer, controller, assistant treasurer, secretary or assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"**Restricted Payment**" means (i) any dividend or other distribution (whether in cash, securities or other property), direct or indirect, on account of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding, (ii) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, termination or similar payment, purchase or other acquisition for value, direct or indirect, of any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any class of Equity Interests or Equity Equivalents of any Group Company, now or hereafter outstanding.

"**S&P**" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc., a New York corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

"**Sale/Leaseback Transaction**" means any direct or indirect arrangement with any Person or to which any such Person is a party providing for the leasing to Holdings or any of its Subsidiaries of any property, whether owned by Holdings or any of its Subsidiaries as of the Closing Date or later acquired, which has been or is to be sold or transferred by Holdings or any

of its Subsidiaries to such Person or to any other Person from whom funds have been, or are to be, advanced by such Person on the security of such property.

"**SEC**" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"**Second Funding Date**" means the date on which the second Borrowing occurs in accordance with Section 4.02.

"**Second Term Loan**" means a Term Loan made pursuant to Section 2.01(b)(ii).

"**Second Term Loan Committed Amount**" means Commitments in an aggregate amount equal to $3,500,000.

"**Securities Laws**" means the Securities Act of 1933, the Securities Exchange Act of 1934 and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

"**Security Agreement**" means the Security Agreement, substantially in the form of Exhibit G-1 hereto, dated as of the date hereof among Holdings, the Borrower, the Subsidiary Guarantors and the Collateral Agent, as the same may be amended, modified or supplemented from time to time.

"**Senior Credit Obligations**" means, with respect to each Loan Party, without duplication:

(i) in the case of the Borrower, all principal of and interest (including, without limitation, any interest which accrues after the commencement of any Insolvency or Liquidation Proceeding with respect to the Borrower, whether or not allowed or allowable as a claim in any such proceeding) on any Loan under, or any Note issued pursuant to, this Agreement or any other Loan Document;

(ii) all fees, expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by such Loan Party (including, without limitation, any amounts which accrue after the commencement of any Insolvency or Liquidation Proceeding with respect to such Loan Party, whether or not allowed or allowable as a claim in any such proceeding) pursuant to this Agreement or any other Loan Document;

(iii) all expenses of the Agents as to which one or more of the Agents have a right to reimbursement by such Loan Party under Section 10.04(a) of this Agreement or under any other similar provision of any other Loan Document, including, without limitation, any and all sums advanced by the Collateral Agent to preserve the Collateral

or preserve its security interests in the Collateral to the extent permitted under any Loan Document or applicable Law;

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement by such Loan Party under Section 10.04(b) of this Agreement or under any other similar provision of any other Loan Document; and

(v) in the case of Holdings and each Subsidiary Guarantor, all amounts now or hereafter payable by Holdings or such Subsidiary Guarantor and all other obligations or liabilities now existing or hereafter arising or incurred (including, without limitation, any amounts which accrue after the commencement of any Insolvency or Liquidation Proceeding with respect to the Borrower, Holdings or such Subsidiary Guarantor, whether or not allowed or allowable as a claim in any such proceeding) on the part of Holdings or such Subsidiary Guarantor pursuant to this Agreement, the Guaranty or any other Loan Document;

together in each case with all renewals, modifications, consolidations or extensions thereof.

"**Senior Credit Party**" means each Lender, the Administrative Agent, the Collateral Agent and each Indemnitee and their respective successors and assigns, and "**Senior Credit Parties**" means any two or more of them, collectively.

"**Sponsor**" means MidOcean Partners III, L.P., MidOcean Partners III-A, L.P. and MidOcean Partners III-D, L.P. and its successors, together with the Sponsor Approved Funds.

"**Sponsor Approved Funds**" means, with respect to the Sponsor, any Fund that is administered or managed by (i) the Sponsor, (ii) an Affiliate of the Sponsor or (iii) an entity that administers or manages the Sponsor.

"**Sponsor Group**" means the Sponsor and any of its Subsidiaries or Affiliates other than Affiliates that are operating companies or Controlled by operating companies.

"**Subsequent Approved Budget**" has the meaning specified in Section 6.01(c).

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, more than 50% of the total voting power of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or business entity other than a corporation, more than 50% of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have more than 50%

ownership interest in a partnership, limited liability company, association or other business entity if such Person or Persons shall be allocated more than 50% of partnership, association or other business entity gains or losses or shall be or control the managing director, manager or a general partner of such partnership, association or other business entity. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower. Notwithstanding the foregoing, any Permitted Joint Venture shall be deemed not to be a Subsidiary of the Borrower or any of its Subsidiaries for purposes of this Agreement.

"**Subsidiary Guarantor**" means each Subsidiary of Holdings on the Closing Date (other than the Borrower and a Foreign Subsidiary) and each Subsidiary of Holdings (other than the Borrower and a Foreign Subsidiary) that becomes a party to the Guaranty after the Closing Date by execution of an Accession Agreement, and "Subsidiary Guarantors" means any two or more of them.

"**Superpriority Claim**" means a claim against any Loan Party in any of the Cases which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

"**Synthetic Lease Obligation**" means the monetary obligation of a Person under (i) a so-called synthetic, off-balance sheet or tax retention lease or (ii) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

"**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.

"**Term Borrowing**" means a Borrowing comprised of Term Loans and identified as such in the Notice of Borrowing with respect thereto.

"**Term Loans**" means, collectively, the Initial Term Loan, the Second Term Loan and the Delayed Draw Term Loans.

"**Term Note**" means a promissory note, substantially in the form of Exhibit B hereto, evidencing the obligation of the Borrower to repay outstanding Term Loans, as such note may be amended, modified or supplemented from time to time.

"**Termination Date**" means the earliest of (i) the Maturity Date, (ii) the acceleration of the Loans and the termination of the Commitments in accordance with the terms hereof, (iii) the consummation of a 363 Sale, (iv) the Consummation Date and (v) 40 days after the date of entry of the Interim Order (or such later date as agreed to by the Required Lenders), if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 40-day period.

"**Threshold Amount**" means $5,000,000.

"**Three Month Facility Extension Option**" has the meaning specified in Section 2.15.

"**Total Committed Amount**" means the sum of the Initial Term Loan Committed Amount, the Second Term Loan Committed Amount and the Delayed Draw Term Loan Committed Amount.

"**Type**" has the meaning specified in Section 1.06.

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

"**Unfunded Liabilities**" means, except as otherwise provided in Section 5.12(a)(i)(B), (i) with respect to each Plan, the amount (if any) by which the present value of all nonforfeitable benefits under each Plan exceeds the current value of such Plan's assets allocable to such benefits, all determined in accordance with the respective most recent valuations for such Plan based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87.

"**United States**" means the United States of America, including each of the States and the District of Columbia, but excluding its territories and possessions.

"**Unused Commitment Amount**" means, for any period, the amount by which (i) the Total Committed Amount exceeds (ii) the daily average sum for such period of the aggregate principal amount of all outstanding Term Loans.

"**Updated Budget**" has the meaning specified in Section 6.01(d).

"**U.S. Patriot Act**" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into Law October 26, 2001)), as the same may be amended, supplemented, modified, replaced or otherwise in effect from time to time.

"**Voting Securities**" means Equity Interests of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons of such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency).

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (i) the sum of the products obtained by multiplying (A) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (B) the number of years (calculated to the nearest one-twelfth) that will elapse between such date

and the making of such payment; by (ii) the then outstanding principal amount of such Indebtedness.

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

"**Wholly-Owned Subsidiary**" means, with respect to any Person at any date, any Subsidiary of such Person all of the shares of capital stock or other ownership interests of which (except Nominal Shares) are at the time directly or indirectly owned by such Person.

Section 1.02. *Other Interpretative Provisions.* With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "**include**," "**includes**" and "**including**" shall be deemed to be followed by the phrase "**without limitation**." The word "**will**" shall be construed to have the same meaning and effect as the word "**shall**." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "**herein**," "**hereof**" and "**hereunder**" and words of similar import when used in any Loan Document shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Law and any reference to any law or regulation shall, unless otherwise specified, refer to such Law or regulation as amended, modified or supplemented from time to time and (vi) the words "**asset**" and "**property**" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

Section 1.03. *Accounting Terms and Determinations.*

(a) *Generally*. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, except as otherwise specifically prescribed herein or as disclosed to the Administrative Agent.

(b) *Changes in GAAP*. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either (x) the Borrower or (y) within 30 days after delivery of any financial statements reflecting any change in GAAP (or after the Lenders have been informed of the change in GAAP affecting such financial statements, if later), the Administrative Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and any other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

Section 1.04. *Times of Day*. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.05. [*Reserved*].

Section 1.06. *Types of Borrowings.* The term "**Borrowing**" denotes the aggregation of Loans of one or more Lenders made to the Borrower pursuant to Article 2 on the same date, all of which Loans are of the same Type (subject to Article 3) and, except in the case of Base Rate Loans, have the same initial Interest Period. Loans hereunder are distinguished by "Type." The "**Type**" of a Loan refers to whether such Loan is a Eurodollar Loan or a Base Rate Loan.

ARTICLE 2
THE CREDIT FACILITIES

Section 2.01. *Commitments to Lend.*

(a) [Reserved].

(b) *Term Loans*. Subject to the terms and conditions set forth herein:

(i) each Lender with a Commitment severally agrees to make an Initial Term Loan to the Borrower on the Closing Date in a principal amount not exceeding its Applicable Percentage of the Initial Term Loan Committed Amount;

(ii) each Lender with a Commitment severally agrees to make a Second Term Loan to the Borrower on the Second Funding Date in a principal amount not exceeding its Applicable Percentage of the Second Term Loan Committed Amount; and

(iii) each Lender with a Commitment severally agrees to make Delayed Draw Term Loans to the Borrower pursuant to this Section 2.01(b)(iii) from time to time during the Delayed Draw Availability Period (but on not more than two different days) in an aggregate principal amount not exceeding its Applicable Percentage of the Delayed Draw Term Loan Committed Amount.

The Term Borrowings shall be made from the several Lenders ratably in proportion to their respective Commitments. The Commitments are not revolving in nature, and amounts repaid or prepaid prior to the Maturity Date may not be reborrowed.

Section 2.02. *Notice of Borrowings.*

(a) *Borrowings*. The Borrower shall give the Administrative Agent a Notice of Borrowing not later than 12:00 P.M. on (i) in the case of the Initial Term Loans and the Second Term Loans, the first Business Day before the date of any proposed Base Rate or Eurodollar Rate Borrowing, which shall be a Business Day, (ii) in the case of any Delayed Draw Term Loan pursuant to a Borrowing in the amount of $7,500,000, the fifth Business Day before any proposed Base Rate Borrowing or Eurodollar Borrowing and (iii) in the case of any Delayed Draw Term Loan pursuant to a Borrowing in an amount in excess of $7,500,000, the third Business Day before any proposed Base Rate Borrowing or Eurodollar Borrowing, specifying:

(i) the date of such Borrowing, which shall be a Business Day;

(ii) the aggregate amount of such Borrowing; *provided*, that the aggregate amount of each Borrowing of Delayed Draw Term Loans shall be equal to $7,500,000 or an integral multiple thereof;

(iii) the initial Type of the Loans comprising such Borrowing;

(iv) in the case of a Eurodollar Borrowing, the duration of the initial Interest Period applicable thereto, subject to the provisions of the definition of "Interest Period"; and

(v) the location (which must be in the United States) and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.03.

If the duration of the initial Interest Period is not specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an initial Interest Period of one month, subject to the provisions of the definition of "Interest Period".

(b) [Reserved].

Section 2.03. *Notice to Lenders; Funding of Loans.*

(a) *Notice to Lenders*. Upon receipt of a Notice of Borrowing, the Administrative Agent shall promptly notify each Lender of such Lender's ratable share of the Borrowing referred to therein, and such Notice of Borrowing shall not thereafter be revocable by the Borrower.

(b) *Funding of Loans*. Not later than 1:00 P.M. on the date of each Borrowing, each Lender participating therein shall make available its share of such Borrowing, in Federal or other immediately available funds, to the Administrative Agent at the Administrative Agent's Office. Unless the Administrative Agent determines that any applicable condition specified in Article 4 has not been satisfied, the Administrative Agent shall make the funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower in the applicable Notice of Borrowing, or, if a Borrowing shall not occur on such date because any condition precedent herein shall not have been met, promptly return the amounts received from the Lenders in like funds, without interest.

(c) *Funding by the Administrative Agent in Anticipation of Amounts Due from the Lenders*. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available to the Administrative Agent on the date of such Borrowing in accordance with subsection (b) of this Section 2.03, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable thereto pursuant to Section 2.06. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent. A notice of the Administrative Agent to a Lender or

the Borrower with respect to any amount owing under this subsection (c) shall be conclusive, absent manifest error.

(d) *Failed Loans*. If any Lender shall fail to make any Loan (a "**Failed Loan**") which such Lender is otherwise obligated hereunder to make to the Borrower on the date of Borrowing thereof, and the Administrative Agent shall not have received notice from the Borrower or such Lender that any condition precedent to the making of the Failed Loan has not been satisfied, then, until such Lender shall have made or be deemed to have made (pursuant to the last sentence of this subsection (d)) the Failed Loan in full or the Administrative Agent shall have received notice from the Borrower or such Lender that any condition precedent to the making of the Failed Loan was not satisfied at the time the Failed Loan was to have been made, whenever the Administrative Agent shall receive any amount from the Borrower for the account of such Lender, (i) the amount so received (up to the amount of such Failed Loan) will, upon receipt by the Administrative Agent, be deemed to have been paid to the Lender in satisfaction of the obligation for which paid, without actual disbursement of such amount to the Lender, (ii) the Lender will be deemed to have made the same amount available to the Administrative Agent for disbursement as a Loan to the Borrower (up to the amount of such Failed Loan) and (iii) the Administrative Agent will disburse such amount (up to the amount of the Failed Loan) to the Borrower or, if the Administrative Agent has previously made such amount available to the Borrower on behalf of such Lender pursuant to the provisions hereof, reimburse itself (up to the amount of the amount made available to the Borrower); *provided, however*, that the Administrative Agent shall have no obligation to disburse any such amount to the Borrower or otherwise apply it or deem it applied as provided herein unless the Administrative Agent shall have determined in its sole discretion that to so disburse such amount will not violate any Law, rule, regulation or requirement applicable to the Administrative Agent. Upon any such disbursement by the Administrative Agent, such Lender shall be deemed to have made such a Base Rate Loan as the Failed Loan to the Borrower in satisfaction, to the extent thereof, of such Lender's obligation to make the Failed Loan.

Section 2.04. *Evidence of Loans.*

(a) *Lender and Administrative Agent Accounts; Notes*. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Senior Credit Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a single Term Note, substantially in the form of Exhibit B,

payable to the order of such Lender for the account of its Lending Office in an amount equal to the aggregate unpaid principal amount of such Lender's Term Loans, which shall evidence such Lender's Term Loans in addition to such accounts or records. Each Lender having one or more Notes shall record the date, amount, Type of each Loan made by it and the date and amount of each payment of principal made by the Borrower with respect thereto, and may, if such Lender so elects in connection with any transfer or enforcement of any Note, endorse on the reverse side or on the schedule, if any, forming a part thereof appropriate notations to evidence the foregoing information with respect to each outstanding Loan evidenced thereby; *provided* that the failure of any Lender to make any such recordation or endorsement or any error in any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under any such Note. Each Lender is hereby irrevocably authorized by the Borrower so to endorse each of its Notes and to attach to and make a part of each of its Notes a continuation of any such schedule as and when required.

(b) [Reserved].

Section 2.05. [*Reserved*].

Section 2.06. *Interest.*

(a) *Rate Options Applicable to Loans*. The Borrowings made on the Closing Date shall be comprised of Base Rate Loans or Eurodollar Loans with a one-month Interest Period (ending on the same date), as the Borrower may request pursuant to Section 2.02. Each Borrowing made after the Closing Date shall be comprised of Base Rate Loans or Eurodollar Loans, as the Borrower may request pursuant to Section 2.02. Borrowings of more than one Type may be outstanding at the same time; *provided, however*, that the Borrower may not request any Borrowing that, if made, would result in an aggregate of more than five separate Groups of Eurodollar Loans being outstanding hereunder at any one time. For this purpose, Loans having different Interest Periods, regardless of whether commencing on the same date, shall be considered separate Groups.

(b) *Rates Applicable to Loans*. Subject to the provisions of subsection (c) below, (i) each Eurodollar Loan shall bear interest on the outstanding principal amount thereof for each Interest Period applicable thereto at a rate per annum equal to the sum of the Adjusted Eurodollar Rate for such Interest Period plus the Applicable Margin, and (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof for each day from the date such Loan is made as, or converted into, a Base Rate Loan until it becomes due or is converted into a Loan of any other Type, at a rate per annum equal to the Base Rate for such day plus the Applicable Margin.

(c) *Additional Interest*. (x) Immediately upon an Event of Default, all Loans shall bear interest at a fluctuating interest rate per annum equal to the Default Rate and (y) if any Senior Credit Obligation is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such overdue amount shall thereafter bear

interest at a fluctuating interest rate per annum equal to the Default Rate, in each case, until such Default or Event of Default has been cured or waived, to the fullest extent permitted by applicable Laws.

(d) *Interest Payments*. Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any Insolvency or Liquidation Proceeding. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(e) *Determination and Notice of Interest Rates*. The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Base Rate promptly following the public announcement of such change. Any notice with respect to Eurodollar Loans shall, without the necessity of the Administrative Agent so stating in such notice, be subject to the provisions of the definition of "Applicable Margin" providing for adjustments in the Applicable Margin applicable to such Loans after the beginning of the Interest Period applicable thereto.

Section 2.07. *Extension and Conversion.*

(a) *Continuation and Conversion Options*. The Loans included in each Borrowing shall bear interest initially at the type of rate allowed by Section 2.06 and as specified by the Borrower in the applicable Notice of Borrowing. Thereafter, the Borrower shall have the option, on any Business Day, to elect to change or continue the type of interest rate borne by each Group of Loans (subject in each case to the provisions of Article 3 and subsection Section 2.07(d)), as follows:

(i) if such Loans are Base Rate Loans, the Borrower may elect to convert such Loans to Eurodollar Loans as of any Business Day; and

(ii) if such Loans are Eurodollar Loans, the Borrower may elect to convert such Loans to Base Rate Loans or elect to continue such Loans as Eurodollar Loans for an additional Interest Period, subject to Section 3.05 in the case of any such conversion or continuation effective on any day other than the last day of the then current Interest Period applicable to such Loans.

Each such election shall be made by delivering a notice, substantially in the form of Exhibit A-2 hereto (a "**Notice of Extension/Conversion**") (which may be by telephone if promptly confirmed in writing), which notice shall not thereafter be revocable by the Borrower, to the Administrative Agent not later than 12:00 Noon on the third Business Day before the conversion or continuation selected in such notice is to be effective. A Notice of Extension/Conversion may,

if it so specifies, apply to only a portion of the aggregate principal amount of the relevant Group of Loans; *provided* that (i) such portion is allocated ratably among the Loans comprising such Group and (ii) the portion to which such Notice of Borrowing applies, and the remaining portion to which it does not apply, are each $500,000 or any larger multiple of $100,000.

(b) *Contents of Notice of Extension/Conversion*. Each Notice of Extension/Conversion shall specify:

(i) the Group of Loans (or portion thereof) to which such notice applies;

(ii) the date on which the conversion or continuation selected in such notice is to be effective, which shall comply with the applicable clause of subsection 2.07(a) above;

(iii) if the Loans comprising such Group are to be converted, the new Type of Loans and, if the Loans being converted are to be Eurodollar Loans, the duration of the next succeeding Interest Period applicable thereto; and

(iv) if such Loans are to be continued as Eurodollar Loans for an additional Interest Period, the duration of such additional Interest Period.

Each Interest Period specified in a Notice of Interest Rate Election shall comply with the provisions of the definition of the term "Interest Period." If no Notice of Extension/Conversion is timely received prior to the end of an Interest Period for any Group of Eurodollar Loans, the Borrower shall be deemed to have elected that such Group be converted to Base Rate Loans as of the last day of such Interest Period.

(c) *Notification to Lenders*. Upon receipt of a Notice of Extension/Conversion from the Borrower pursuant to subsection 2.07(a) above, the Administrative Agent shall promptly notify each Lender of the contents thereof.

(d) *Limitation on Conversion/Continuation Options*. The Borrower shall not be entitled to elect to convert any Loans to, or continue any Loans for an additional Interest Period as, Eurodollar Loans if the aggregate principal amount of any Group of Eurodollar Loans created or continued as a result of such election would be less than $500,000. If an Event of Default shall have occurred and be continuing when the Borrower delivers notice of such election to the Administrative Agent, the Borrower shall not be entitled to elect to convert any Eurodollar Loans to, or continue any Eurodollar Loans for an additional Interest Period as, Eurodollar Loans having an Interest Period in excess of one month.

Section 2.08. *Maturity of Loans.*

(a) [Reserved].

(b) *Repayment of Term Loans*. Subject to adjustment as a result of prior prepayments, the Borrower shall repay, and there shall become due and payable (together with accrued interest

thereon) on the Termination Date, the unpaid principal amount of all Term Loans then outstanding.

Section 2.09. *Prepayments.*

(a) *Voluntary Prepayment of Term Loans*. The Borrower shall have the right voluntarily to prepay Term Loans in whole or in part from time to time, subject to Section 3.05 but otherwise without premium or penalty; *provided*, *however*, that each partial prepayment of Term Loans shall be in a minimum principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, in the case of Eurodollar Loans, and $500,000 or a whole multiple of $100,000 in excess thereof, in the case of Base Rate Loans. Each payment pursuant to this Section shall be applied as set forth in Section 2.09(d).

(b) *Mandatory Prepayments*.

(i) [Reserved].

(ii) [Reserved].

(iii) *Asset Dispositions, Casualties and Condemnations, Etc*. Within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Asset Disposition (other than any Asset Disposition permitted under clauses (a), (b), (c), (d), (e), (g), (h), (i), (j)(ii), (k), (l), (m), (n), (o), (q), (r) or (s) of Section 7.05), Casualty or Condemnation (excluding, in the case of any Casualty or Condemnation, Insurance Proceeds and Condemnation Awards to the extent and so long as they constitute Reinvestment Funds), the Borrower shall prepay the Senior Credit Obligations in an aggregate amount equal to 100% of the Net Cash Proceeds of such Asset Disposition, Casualty or Condemnation; *provided*, that no such prepayment caused by the receipt of Net Cash Proceeds from any Asset Disposition shall be required to the extent that the sum of such Net Cash Proceeds and all other Net Cash Proceeds from Asset Dispositions occurring after the Closing Date and during the same fiscal year does not exceed $750,000 (it being understood that a prepayment shall only be required of such excess).

(iv) *Debt Issuances*. Within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Debt Issuance (other than any Debt Issuance permitted pursuant to Section 7.01 of this Agreement), the Borrower shall prepay the Senior Credit Obligations in an aggregate amount equal to 100% of the Net Cash Proceeds of such Debt Issuance.

(v) *Equity Issuance*. Within five Business Days after receipt by any Group Company of Net Cash Proceeds from any Equity Issuance, the Borrower shall prepay the Senior Credit Obligations in an aggregate amount equal to 100% of the Net Cash Proceeds of such Equity Issuance.

(vi) *Application of Mandatory Prepayments*. All amounts required to be paid pursuant to this Section 2.09(b) shall be applied *first*, to the prepayment of any outstanding Senior Credit Obligations and *second*, subject to the Carve-Out and the payment in full of the Professional Fees, such proceeds shall be deposited to an escrow account (such escrow account to be established on terms and conditions reasonably satisfactory to the Pre-Petition First Lien Agent) to be used solely to repay or cash-collateralize the Indebtedness outstanding under the Pre-Petition First Lien Credit Agreement (and, after such Indebtedness have been repaid or cash-collateralized in full, to repay the Indebtedness outstanding under the Pre-Petition Second Lien Credit Agreement).

(vii) *Order of Applications*. Within the parameters of the applications set forth above, prepayments shall be applied *first* to Base Rate Loans and then, to Eurodollar Loans in direct order of Interest Period maturities. All prepayments of Eurodollar Loans under this Section 2.09(b) shall be subject to Section 3.05. All prepayments under this Section 2.09(b) shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment.

(viii) *Payments Cumulative*. Except as otherwise expressly provided in this Section 2.09, payments required under any subsection or clause of this Section 2.09 are in addition to payments made or required under any other subsection or clause of this Section 2.09.

(c) *Notice of Mandatory Prepayment Events*. The Borrower shall use commercially reasonable efforts to give to the Administrative Agent and the Lenders at least one Business Day's prior written or telecopy notice of each and every event or occurrence requiring a prepayment under Section 2.09(b)(iii), (iv) or (v), including the amount of Net Cash Proceeds expected to be received therefrom and the expected schedule for receiving such proceeds; *provided, however*, that in the case of any prepayment event consisting of a Casualty or Condemnation, the Borrower shall give such notice within five Business Days after the occurrence of such event.

(d) *Notices of Prepayments*. Other than as specified in (c) above, the Borrower shall notify the Administrative Agent, by 11:00 A.M., at least three Business Days prior to the date of voluntary prepayment in the case of Eurodollar Loans and on the day of prepayment in the case of Base Rate Loans. Each notice of prepayment shall specify the prepayment date, the principal amount to be prepaid, whether the Loan to be prepaid is a Eurodollar Loan or a Base Rate Loan and, in the case of a Eurodollar Loan, the Interest Period of such Loan. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's pro-rata share, if any, thereof. Once such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable as specified therein. Subject to the foregoing, amounts prepaid under Section 2.09(a) shall be applied as the Borrower may elect; *provided* that if the Borrower fails to specify the application of a voluntary prepayment, then such prepayment shall be applied to the Term

Loans, first to Base Rate Loans and then to Eurodollar Loans in direct order of Interest Period. Amounts prepaid under Section 2.09(b) shall be applied as set forth therein. All prepayments of Eurodollar Loans under this Section 2.09 shall be accompanied by accrued interest on the principal amount being prepaid to the date of payment, together with any additional amounts required pursuant to Section 3.05.

Section 2.10. *Adjustment of Commitments.*

(a) *Optional Termination or Reduction of Commitments (Pro-Rata).* The Borrower may from time to time permanently reduce or terminate the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount in whole or in part (in minimum aggregate amounts of $1,000,000 or any whole multiple of $500,000 in excess thereof (or, if less, the full remaining amount of the then applicable Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount)) upon five Business Days' prior written or telecopy notice to the Administrative Agent. The Administrative Agent shall promptly notify each Lender of the receipt by the Administrative Agent of any notice from the Borrower pursuant to this Section 2.10(a). Any partial reduction of the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount pursuant to this Section 2.10(a) shall be applied to the Commitments of the Lenders pro-rata based upon their respective Applicable Percentages. The Borrower shall pay to the Administrative Agent for the account of the Lenders in accordance with the terms of Section 2.11, on the date of each termination or reduction of the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount, any fees accrued through the date of such termination or reduction on the amount of the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount so terminated or reduced.

(b) *Termination*.

(i) The Commitments in respect of the Initial Term Loan Committed Amount shall terminate automatically immediately after the making of the Initial Term Loans on the Closing Date;

(ii) The Commitments in respect of the Second Term Loan Committed Amount shall terminate automatically immediately after the making of the Second Term Loans on the Second Funding Date; and

(iii) The Commitments in respect of the Delayed Draw Term Loan Committed Amount shall terminate automatically on the Termination Date.

(c) *General*. The Borrower shall pay to the Administrative Agent for the account of the Lenders in accordance with the terms of Section 2.10, on the date of each termination or reduction of the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount, the Commitment Fee accrued through the date of such termination or

reduction on the amount of the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount so terminated or reduced.

Section 2.11. *Fees.*

(a) *Commitment Fee*. The Borrower shall pay to the Administrative Agent for the account of each Lender (other than a Defaulting Lender) a fee (the "**Commitment Fee**") on such Lender's Applicable Percentage of the daily Unused Commitment Amount, computed at a per annum rate for each day at a rate equal to the applicable rate per annum set forth in the definition of "Applicable Margin" in Section 1.01. The Commitment Fee shall commence to accrue on the Closing Date and shall be due and payable in arrears on the last Business Day of each month (and on any date that the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount is reduced as provided in Section 2.10(a) and on the Termination Date) for the period ending on each such date, with the first such payment due on April 30, 2011.

(b) *Other Fees*. The Borrower shall pay (i) to the Administrative Agent, for its own account, fees in the amounts and at the times specified in the Agency Fee Letter and (ii) to the Lead Arranger, for the ratable account of the Lenders on the Closing Date, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

Section 2.12. *Pro Rata Treatment.* Except to the extent otherwise provided herein:

(a) *Loans*. Each Borrowing, each payment or prepayment of principal of or interest on any Loan, each payment of fees, each reduction of the Second Term Loan Committed Amount or the Delayed Draw Term Loan Committed Amount and each conversion or continuation of any Loan, shall be allocated pro-rata among the Lenders in accordance with the respective Applicable Percentages (or, if the Commitments of the Lenders have expired or been terminated, in accordance with the respective principal amounts of the outstanding Loans of the Lenders); *provided* that, in the event any amount paid to any Lender pursuant to this subsection (a) is rescinded or must otherwise be returned by the Administrative Agent, each Lender shall, upon the request of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(b) [Reserved].

Section 2.13. *Sharing of Payments by Lenders.* If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro-rata share thereof as provided herein, then the Lender receiving such greater proportion shall

(a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participation in the Loans, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing thereon; *provided* that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to Holdings, the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

Section 2.14. *Payments Generally; Administrative Agent's Clawback.*

(a) *Payments by the Borrower*. All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Each payment of principal of and interest on Loans and fees hereunder shall be paid not later than 3:00 P.M. on the date when due, in Dollars and in Federal or other funds immediately available to the Administrative Agent at the account designated by it by notice to the Borrower. Payments received after 3:00 P.M. shall be deemed to have been received on the next Business Day, and any applicable interest or fee shall continue to accrue. The Administrative Agent may, in its sole discretion, distribute such payments to the applicable Lenders on the date of receipt thereof, if such payment is received prior to 3:00 P.M.; otherwise the Administrative Agent may, in its sole discretion, distribute such payment to the applicable Lenders on the date of receipt thereof or on the immediately succeeding Business Day. Whenever any payment hereunder shall be due on a day which is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day (and such extension of time shall be reflected in computing interest or fees, as the case may be), unless (in the case of Eurodollar Loans) such Business Day falls in another calendar month, in which case the date for payment thereof shall be the next preceding Business Day. If the date for any payment of principal is extended by operation of Law or otherwise, interest thereon shall be payable for such extended time.

(b) *Presumption by the Administrative Agent*. Unless the Administrative Agent shall have received notice (which may be by telephone if promptly confirmed in writing) from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith, and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) *Failure to Satisfy Conditions Precedent*. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article 2, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article 4 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender without interest.

(d) *Obligations of Lenders Several*. The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make a Loan required to be made by it as part of any Borrowing hereunder shall not relieve any other Lender of its obligation, if any, hereunder to make any Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on such date of Borrowing.

(e) *Funding Source*. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) *Computations*. All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate and of the Commitment Fee shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which Loan is made (or converted or continued), and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made (or continued or converted) shall, subject to subsection (a) above, bear interest for one day. Each

determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.15. *Extension of Maturity Date*

(a) *Request for Extension*. The Borrower may extend the Maturity Date to the date that is nine months following the Closing Date (the "**Three Month Facility Extension Option**") upon satisfaction of the following conditions prior to the date that is six months following the Closing Date:

(i) The Borrower shall have provided written notice to the Administrative Agent on a date (the "**Extension Request Date**") not more than 60 days nor less than 30 days prior to the date that is six months following the Closing Date of its intention to exercise the Three Month Facility Extension Option.

(ii) The Borrower shall have paid a fee to the Administrative Agent, for the account of the Lenders on a ratable basis, equal to 0.75% of the sum of the aggregate amount of Term Loans and unused Commitments outstanding immediately prior to giving effect to the extension.

(iii) The Borrower shall have delivered an updated and extended Approved Budget for the extension period, dated as of a date not more than seven days prior to effectiveness of the maturity extension.

(iv) At the time of the effectiveness of the maturity extension, no Default or Event of Default shall have occurred and be continuing.

(v) At the time of the effectiveness of the maturity extension, the representations and warranties contained in this Agreement shall be true and correct in all material respects.

(vi) At the time of the effectiveness of the maturity extension, Liquidity shall be not less than $7,000,000.

The Administrative Agent will notify the Borrower promptly upon the effectiveness of the Three Month Facility Extension Option.

Section 2.16. *Priority and Liens Applicable to Loan Parties.*

(a) Each of Holdings and the Borrower, on behalf of itself and on behalf of each Subsidiary Guarantor, hereby covenants, represents and warrants that, upon entry of the Interim Order (and the Final Order, as applicable) and the execution of this Agreement, the Senior Credit Obligations of the Borrower and the Subsidiary Guarantors:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute joint and several Superpriority Claims in the Cases (but excluding a claim on Avoidance Actions and, prior to entry of the Final Order, the proceeds of successful Avoidance Actions, including, without limitation, assets as to which Liens are avoided);

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a perfected first priority security interest and Lien on all Collateral of such Loan Party to the extent that such Collateral is not subject to (A) valid, perfected and non-avoidable Liens as of the Petition Date or (B) Avoidance Actions (it being understood that notwithstanding such exclusion of Avoidance Actions, upon entry of the Final Order, to the extent approved by the Bankruptcy Court, such Lien shall attach to any proceeds of successful Avoidance Actions including, without limitation, assets as to which Liens are avoided);

(iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall at all times be secured by a perfected junior security interest and Lien on all Collateral of such Loan Party to the extent that such Collateral is subject to valid, perfected and unavoidable Liens that were in existence immediately prior to the Petition Date, or to valid and unavoidable Liens that were in existence immediately prior to the Petition Date that were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code (in each case other than Liens that secure obligations of such Loan Party under either the Pre-Petition First Lien Credit Agreement or the Pre-Petition Second Lien Credit Agreement, which existing Liens will be primed by the Liens described in clause (iv) below); and

(iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, shall at all times be secured by a perfected first priority priming security interest and Lien on all Collateral of such Loan Party (the "**Priming Liens**") to the extent that such Collateral is subject to the existing Liens that secure the obligations of such Loan Party under the Pre-Petition First Lien Credit Agreement or the Pre-Petition Second Lien Credit Agreement or to a valid and enforceable right of setoff by any lender party to a Pre-Petition Facility (collectively, the "**Primed Liens**").

(b) The Priming Liens (x) are senior in all respects to the interests in such property of the lenders under any Pre-Petition Facility and (y) also prime any Liens granted after the Petition Date to provide adequate protection in respect of any of the Primed Liens. The Primed Liens shall be primed by and made subject and subordinate to the perfected first priority senior Liens to be granted to the Administrative Agent, which senior priming Liens in favor of the Administrative Agent shall also prime any Liens granted after the commencement of the Cases to provide adequate protection in respect of any of the Primed Liens, but shall not prime Liens, if any, to which the Primed Liens are subject at the time of the commencement of the Cases.

(c) The Superpriority Claims and the Liens granted pursuant to clauses (a)(i) through (a)(iv) above and all prepetition claims, Liens and interests shall be subject in each case only to a

carve-out (the "**Carve-Out**") which shall be comprised of the following: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code not to exceed $100,000 and (iii) at any time after the first Business Day after the occurrence and during the continuance of an Event of Default and delivery of notice thereof to (A) the United States Trustee for the Southern District of New York, (B) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022 (Attention: Jason Kanner, Esq. and Edward Sassower, Esq.), (C) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 (Attention: Timothy Graulich, Esq. and Jinsoo Kim, Esq.) and (D) counsel to the Official Committee of Unsecured Creditors in the Cases (the "**Carve-Out Notice**"), to the extent allowed at any time, whether before or after delivery of a Carve-Out Notice, whether by interim order, procedural order or otherwise, the payment of all professional fees, costs and expenses incurred or accrued by persons or firms retained by the Loan Parties and any statutory committees appointed in the Cases (each, a "**Committee**") (but excluding fees and expenses of third party professionals employed by such Committee's members) and allowed by the Bankruptcy Court at any time (collectively, the "**Professional Fees**"), in an aggregate amount not exceeding $4,000,000 (the "**Carve-Out Cap**"), which amount may be used subject to the terms of the Interim Order and the Final Order (as applicable) (plus all unpaid Professional Fees allowed by the Bankruptcy Court at any time that were incurred on or prior to the day immediately following the Business Day after delivery of the Carve-Out Notice). Immediately upon delivery of a Carve-Out Notice, the Loan Parties shall be required to transfer from their accounts (and the Lenders consent to such transfer notwithstanding anything to the contrary in any Loan Document) to a segregated account (the "**Carve-Out Account**") not subject to the control of the Administrative Agent an amount equal to the Carve-Out Cap; *provided* that the Administrative Agent and the Lenders shall have a security interest in any residual interest in the Carve Out Account, if any, after the payment in full of all the fees and expenses and other obligations benefiting from the Carve Out. The dollar limitation in this section on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the delivery of a Carve-Out Notice or by any fees, expenses, indemnities or other amounts paid to the Administrative Agent or any Lender or such party's respective attorneys and agents under this Agreement or otherwise). The proceeds on deposit in the Carve-Out Account shall be available only to satisfy obligations benefitting from the Carve-Out, and the Administrative Agent and Lenders (1) shall not sweep or foreclose on cash of the Loan Parties necessary to fund the Carve-Out Account and (2) shall have a security interest in any residual interest in the Carve-Out Account available following satisfaction in full of all obligations benefitting from the Carve-Out. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in this section. Notwithstanding anything to the contrary in the Interim Order or the Final Order, all Liens and claims granted pursuant to the Interim Order and the Final Order shall be subject to the Carve-Out as provided for herein. No portion of the Carve-Out, any cash collateral or proceeds of the Term Loans may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, (i) any of the Lenders' Liens or claims, or the initiation or

prosecution of any claim or action against any Lender, including any claim under chapter 5 of the Bankruptcy Code, in respect of the Pre-Petition First Lien Credit Agreement and (ii) any claims or causes of actions against the lenders under the Pre-Petition First Lien Credit Agreement, their respective advisors, agents and sub-agents, including formal discovery proceedings in anticipation thereof, and/or challenging any Lien of the lenders under the Pre-Petition First Lien Credit Agreement; provided, that, in each case such limitations shall not apply to any investigation by a Committee in an aggregate amount for all Committees not to exceed $50,000.

All of the Liens described herein shall be effective and perfected upon entry of the Interim Order.

Section 2.17. *No Discharge; Survival of Claims.* Each of Borrower and the Subsidiary Guarantors agrees that (a) its obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan (and each of Borrower and the Subsidiary Guarantors, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (b) the Superpriority Claims granted to the Agents and the Lenders pursuant to the Orders and described in Section 2.16 and the Liens granted to the Collateral Agent pursuant to the Orders and described in Section 2.16 shall not be affected in any manner by the entry of an order confirming a Reorganization Plan other than the discharge and release of such Liens and Claims upon payment in full in cash of the Senior Credit Obligations as provided for herein.

Section 2.18. *Payment of Obligations.* Subject to the provisions of Section 8.02, upon the maturity (whether by acceleration or otherwise) of any of the Senior Credit Obligations, the Lenders shall be entitled to immediate payment thereof without further application to or order of the Bankruptcy Court.

ARTICLE 3
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01. *Taxes.*

(a) *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, *provided* that if any Loan Party shall be required by applicable Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Loan Party shall make such deductions and (iii) the applicable Loan Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Law.

(b) *Payment of Other Taxes by the Borrower*. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) *Indemnification by the Borrower*. The Borrower shall indemnify the Administrative Agent and each Lender within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) payable by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided* that if Borrower reasonably believes that such Taxes were not correctly or legally asserted, the Administrative Agent or such Lender, as the case may be, will use reasonable efforts to cooperate with such Borrower to obtain a refund of such Taxes so long as such efforts would not, in the sole determination of the Administrative Agent or such Lender, as the case may be, result in any additional costs, expenses or risks or be otherwise disadvantageous to it; *provided, further*, that Borrower shall not be required to compensate the Administrative Agent or any Lender pursuant to this Section 3.01(c) for any amounts incurred more than twelve months prior to the date such Lender or the Administrative Agent, as the case may be, notifies Borrower of such Lender's or the Administrative Agent's intention to claim compensation therefor, but if the circumstances giving rise to such claim have a retroactive effect (*e.g.*, in connection with the audit of a prior tax year), then such twelve-month period shall be extended to include such period of retroactive effect. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) *Evidence of Payments*. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) *Status of Lenders*. To the extent it is legally entitled to do so, any Lender that is entitled to an exemption from or reduction of withholding tax under the Law of the jurisdiction in which the Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or time prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting

requirements. Without limiting the generality of the foregoing, in the event that the Borrower is resident for tax purposes in the United States, any Foreign Lender shall, to the extent it is legally able to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party;

(ii) duly completed copies of Internal Revenue Service Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (A) a certificate to the effect that such Foreign Lender is not (x) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (y) a "10 percent shareholder" of the Borrower within the meaning of section 881(c)(3)(B) of the Code, or (z) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (B) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower to determine the withholding or deduction required to be made.

(f) *Inability of Lender to Submit Forms*. If any Foreign Lender determines, as a result of any change in applicable law, regulation or treaty, or in any official application or interpretation thereof, that it is required to withdraw or cancel any such form or certificate previously submitted or any such form or certificate otherwise becomes ineffective or inaccurate, such Foreign Lender shall promptly notify the Borrower and the Administrative Agent of such fact and the Foreign Lender will be entitled to withdraw or cancel any affected form or certificate, as applicable.

(g) *Treatment of Certain Refunds*. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any indemnities, Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Loan Party under this Section with respect to the indemnities, Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the

request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02. *Illegality.* If, on or after the date of this Agreement, the adoption of any applicable Law, or any change in any applicable Law, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Lending Office) with any request or directive (whether or not having the force of Law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Lender (or its Lending Office) to make, maintain or fund any of its Eurodollar Loans and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon, until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, the obligation of such Lender to make Eurodollar Loans, or to convert outstanding Loans into Eurodollar Loans, shall be suspended. If such notice is given, each Eurodollar Loan of such Lender then outstanding shall be converted to a Base Rate Loan either (i) on the last day of the then current Interest Period applicable to such Eurodollar Loan, if such Lender may lawfully continue to maintain and fund such Loan to such day or (ii) immediately, if such Lender shall determine that it may not lawfully continue to maintain and fund such Loan to such day.

Section 3.03. *Inability to Determine Rates.* If on or prior to the first day of any Interest Period for any Eurodollar Loan:

(a) the Administrative Agent determines (which determination shall be conclusive) that by reason of circumstances affecting the relevant market, adequate and reasonable means do not exist for ascertaining the applicable Eurodollar Rate for such Interest Period; or

(b) Lenders having 50% or more of the aggregate amount of the Commitments advise the Administrative Agent that the Eurodollar Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to such Lenders of funding their Eurodollar Loans for such Interest Period;

the Administrative Agent shall forthwith give notice thereof to the Borrower and the Lenders, whereupon, until the Administrative Agent notifies the Borrower that the circumstances giving rise to such suspension no longer exist, (i) the obligations of the Lenders to make Eurodollar Loans, or to continue or convert outstanding Loans as or into Eurodollar Loans, shall be suspended and (ii) each outstanding Eurodollar Loan shall be converted into a Base Rate Loan on the last day of the then current Interest Period applicable thereto. Unless the Borrower notifies the Administrative Agent prior to 12:00 PM on the Business Day of the date of any

Eurodollar Borrowing for which a Notice of Borrowing has previously been given that it elects not to borrow on such date, such Borrowing shall instead be made as a Base Rate Borrowing in the same aggregate amount as the requested Borrowing and shall bear interest for each day from and including the first day to but excluding the last day of the Interest Period applicable thereto at the rate applicable to Base Rate Loans for such day.

Section 3.04. *Increased Costs and Reduced Return; Capital Adequacy.*

(a) *Increased Costs Generally*. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, deposits with or for the account of, or credit extended or participated in by, any Lender (or its Lending Office) (except any reserve requirement which is reflected in the determination of the Adjusted Eurodollar Rate hereunder);

(ii) subject any Lender (or its Lending Office) to any tax of any kind whatsoever with respect to this Agreement or any Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes indemnified under Section 3.01(c) and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender);

(iii) impose on any Lender (or its Lending Office) or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender (or its Lending Office) of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) *Capital Requirements*. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) *Certificates for Reimbursement*. A certificate of a Lender setting forth the amount necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) *Delays in Requests*. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than three months prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 3.05. *Compensation for Losses.* Promptly upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

excluding any loss of anticipated profits from maintaining such broken LIBOR contract and excluding any differential on an applicable margin on funds so redeployed but including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. A certificate (with reasonable supporting detail) of any Lender setting forth any amount or amounts which such Lender is entitled to receive pursuant to this Section 3.05 shall be delivered to the Borrower and shall be conclusive absent manifest error; *provided* that the Borrower shall not be required to compensate such Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender notifies the Borrower in writing of the increased costs or reductions and of such Lender's

intention to claim compensation thereof; *provided, further* that, if the change in law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

Section 3.06. *Base Rate Loans Substituted for Affected Eurodollar Loans.* If (a) the obligation of any Lender to make, or to continue or convert outstanding Loans as or to, Eurodollar Loans has been suspended pursuant to Section 3.02 or (b) any Lender has demanded compensation under Section 3.01 or 3.04 with respect to its Eurodollar Loans, and in any such case the Borrower shall, by at least five Business Days' prior notice to such Lender through the Administrative Agent, have elected that the provisions of this Section 3.06 shall apply to such Lender, then, unless and until such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, all Loans which would otherwise be made by such Lender as (or continued as or converted to) Eurodollar Loans shall instead be Base Rate Loans (on which interest and principal shall be payable contemporaneously with the related Eurodollar Loans of the other Lenders). If such Lender notifies the Borrower that the circumstances giving rise to such suspension or demand for compensation no longer exist, the principal amount of each such Base Rate Loan shall be converted into a Eurodollar Loan on the first day of the next succeeding Interest Period applicable to the related Eurodollar Loans of the other Lenders.

Section 3.07. *Mitigation Obligations; Replacement of Lenders.*

(a) *Designation of a Different Lending Office*. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) *Replacement of Lenders*. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any additional amount to any Lender or any Governmental

Authority for the account of any Lender pursuant to Section 3.01, the Borrower may replace such Lender in accordance with Section 10.13.

Section 3.08. *Survival*. All of the Borrower's obligations under this Article 3 shall survive termination of the Commitments and repayment of all other Senior Credit Obligations hereunder.

ARTICLE 4
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

Section 4.01. *Conditions to Initial Credit Extension.* The obligation of each Lender to make its initial Credit Extension hereunder is subject to the satisfaction or waiver of the following conditions precedent:

(a) *Executed Loan Documents*. The Administrative Agent shall have received duly executed counterparts from each party thereto of: (i) this Agreement; (ii) the Notes; (iii) the Guaranty; (iv) the Security Agreement; and (v) the Pledge Agreement, each in form and substance reasonably satisfactory to the Administrative Agent.

(b) *Organization Documents*. After giving effect to the transactions contemplated hereby, the Administrative Agent shall have received: (i) a copy of the Organization Documents, including all amendments thereto, of each Loan Party, certified as of a recent date by the Secretary of State or other applicable Governmental Authority of its respective jurisdiction of organization; (ii) a certificate as to the good standing (or comparable status) of each Loan Party (other than Carmela's, LLC, Sbarro Express LLC, Sbarro Venture, Inc., and Demefac Leasing Corp.) from such Secretary of State, as of a recent date; (iii) a certificate of the Secretary or Assistant Secretary of each Loan Party dated the Closing Date and certifying (A) that the Organization Documents of such Loan Party have not been amended since the date of the last amendment thereto shown on the certificate of good standing from its jurisdiction of organization furnished pursuant to clause (ii) above; (B) that attached thereto is a true and complete copy of the agreement of limited partnership, operating agreement or by-laws of such Loan Party, as applicable, as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors or other governing body of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which it is to be a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect; and (D) as to the incumbency and specimen signature of each officer executing any Loan Document; and (iv) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (iii) above.

(c) *Officer's Certificates*. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming compliance with the conditions precedent set forth in Section 4.04(b), (c) and (d).

(d) *Opinions of Counsel.* On the Closing Date, the Administrative Agent shall have received a favorable written opinion of Kirkland & Ellis LLP, counsel to the Loan Parties, addressed to the Administrative Agent, Collateral Agent and each Lender, dated the Closing Date, in the form reasonably satisfactory to the Administrative Agent.

(e) *Perfection of Personal Property Security Interests and Pledges; Search Reports.* On or prior to the Closing Date, the Collateral Agent shall have received:

(i) an Abbreviated Perfection Certificate from each Loan Party;

(ii) appropriate financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by local Law) authenticated and authorized for filing under the UCC or other applicable local law of each jurisdiction in which the filing of a financing statement or giving of notice may be required, or reasonably requested by the Collateral Agent, to perfect the security interests intended to be created by the Collateral Documents; and

(iii) evidence of the authorization of the filing of all UCC-1 filings to perfect the security interests intended to be created by the Collateral Documents.

(f) *Material Adverse Effect.* Since March 30, 2011, there shall have been no event, effect or condition that, individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect.

(g) *Payment of Fees.* All costs, fees and expenses due and payable to the Lead Arranger, the Administrative Agent, the Collateral Agent and the Lenders on or before the Closing Date shall have been paid to the extent invoiced in reasonable detail.

(h) *Counsel Fees.* The Borrower shall have paid all reasonable fees, charges and disbursements of counsel to the Lead Arranger to the extent invoiced in reasonable detail prior to or on the Closing Date, plus to the extent submitted in writing to the Borrower prior to or on the Closing Date such additional amounts of fees, charges and disbursements as shall constitute the Lead Arranger's reasonable written estimate of such fees, charges and disbursements incurred or to be incurred by it prior to or on the Closing Date in connection with the facility contemplated hereunder, the syndication thereof, the preparation of the definitive documentation therefor and the other transactions contemplated hereby (*provided* that such estimate shall not thereafter preclude a final settling of accounts between the Companies and such counsel) directly to (i) Davis Polk & Wardwell LLP, counsel to the Lead Arranger and (ii) any special and local counsel to the Lenders retained by or on behalf of the Lead Arranger in consultation with the Borrower in

each jurisdiction or for each specialty which the Lead Arranger reasonably determine it to be necessary to retain such counsel.

(i) *Margin Regulations.* All Loans made by the Lenders to the Borrower shall be in full compliance with the Federal Reserve's Margin Regulations within the meaning of Regulation U.

(j) *U.S. Patriot Act.* On the Closing Date to the extent such information was requested at least two (2) Business Days prior to the Closing Date, each Loan Party shall have provided the documentation and other information to the Administrative Agent that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the U.S. Patriot Act.

(k) *[Reserved.]*

(l) *Forecasts and Initial Approved Budget*. The Lead Arranger and the Lenders shall have received, and the Lead Arranger and the Required Lenders shall be reasonably satisfied with, (x) monthly financial forecasts for the Borrower and its Subsidiaries through December 27, 2011 (monthly financial forecasts previously provided to the Lead Arranger and the Lenders being satisfactory to the Lead Arranger and the Required Lenders for purposes hereof) and (y) the Initial Approved Budget.

(m) *Bankruptcy Proceedings.* The Petition Date shall have occurred, and the Lead Arranger shall be reasonably satisfied with the form and substance of the "first day orders" (including a cash management order).

(n) *Interim Order*. No later than 5 Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim Order.

(o) *Perfection Stipulation*. The Loan Parties shall have stipulated that the Liens and security interests securing the Pre-Petition First Lien Credit Agreement are valid and properly perfected.

(p) *Absence of Trustee or Examiner*. No trustee or examiner shall have been appointed with respect to any of the Group Companies or their respective properties.

The documents referred to in this Section 4.01 shall be delivered to the Administrative Agent no later than the Closing Date (or such earlier date as stated in this Section 4.01). The certificates and opinions referred to in this Section 4.01 shall be dated the Closing Date.

Section 4.02. *Conditions to Second Credit Extension.* The obligations of any Lender to make its second Credit Extension hereunder is subject to the satisfaction or waiver of the following conditions precedent:

(a) *Closing Date*. The Closing Date shall have occurred.

(b) *Final Order*. (i) No later than 40 days following the entry of the Interim Order, the Bankruptcy Court shall have entered the Final Order and (ii) the Final Order shall have been entered not less than three Business Days prior to the Second Funding Date.

(c) *Perfection Certificate*. The Collateral Agent shall have received a Perfection Certificate from each Loan Party.

(d) *Evidence of Insurance.* The Collateral Agent shall have received copies of insurance policies or certificates of insurance of the Loan Parties and their Subsidiaries evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming the Collateral Agent as additional insured or loss payee, as applicable, on behalf of the Lenders.

Section 4.03. *Conditions to Delayed Draw Term Loans.* The obligations of any Lender to make any Delayed Draw Term Loan hereunder is subject to the satisfaction or waiver of the following condition: the Second Closing Date shall have occurred.

Section 4.04. *Conditions to All Credit Extensions.* The obligation of any Lender to make a Loan on the occasion of any Borrowing is subject to the satisfaction or waiver of the following conditions:

(a) *Notice*. The Borrower shall have delivered to the Administrative Agent, an appropriate Notice of Borrowing, duly executed and completed, by the time specified in, and otherwise as permitted by, Section 2.02.

(b) *Representations and Warranties*. The representations and warranties of Holdings and the Borrower contained in Article 5 of this Agreement and of Holdings, the Borrower and all other Loan Parties in any other Loan Document shall be (i) in the case of representations and warranties qualified by "materiality," "Material Adverse Effect" or similar language, true and correct in all respects and (ii) in the case of all other representations and warranties, true and correct in all material respects, in each case on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct on the basis set forth above as of such earlier date, and except that for purposes of this Section 4.04 after the Closing Date, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished after the Closing Date pursuant to subsections (a) and (b), respectively, of Section 6.01.

(c) *No Default*. No Default or Event of Default shall exist or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(d) *Orders*. The Interim Order or the Final Order, as applicable, shall be in full force and effect, and shall not have been stayed, reversed or vacated, or modified or amended in a manner that the Required Lenders reasonably determine is adverse in any material respect to the

interests of the Lenders. After giving effect to the proposed Credit Extension, the aggregate principal amount of the outstanding Term Loans shall not exceed the amount authorized by the Interim Order or the Final Order, as then in effect.

The delivery of each Notice of Borrowing shall constitute a representation and warranty by the Loan Parties of the correctness of the matters specified in subsections (b), (c) and (d) above.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrower represents and warrants to the Administrative Agent and the Lenders that on and as of the Closing Date and after giving effect to the making of the Loans and the other financial accommodations on the Closing Date and on and as of each date as required by Sections 4.01, 4.02, 4.03 or 4.04:

Section 5.01. *Existence, Qualification and Power; Compliance with Laws.* Each Group Company (a) is duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (other than, for the period beginning on the Closing Date and ending on the date that is 45 days thereafter, Carmela's, LLC, Sbarro Express LLC, Sbarro Venture, Inc., and Demefac Leasing Corp.), (b) has all requisite corporate or other organizational power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) subject to entry of any applicable order of the Bankruptcy Court, own its assets and carry on its business and (ii) subject to entry of the Interim Order (or the Final Order, when applicable), execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license (other than, for the period beginning on the Closing Date and ending on the date that is 45 days thereafter, Carmela's, LLC, Sbarro Express LLC, Sbarro Venture, Inc., and Demefac Leasing Corp.), and (d) is in compliance with all Laws (including, without limitation, the U.S. Patriot Act), except in any case referred to in clause (b)(i), (c) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. *Authorization; No Contravention.* Subject to entry of the Interim Order (or the Final Order, when applicable) and the terms thereof, the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate, partnership, limited liability company or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien (other than Permitted Liens) under, any Contractual Obligation to which such Person is a party or any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject except in any case that such

conflict, breach or contravention would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect or (c) violate any Law, except in any case for such violations could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents.* Subject to entry of the Interim Order (or the Final Order, when applicable), no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document to which it is a party.

Section 5.04. *Binding Effect.* Subject to entry of the Interim Order (or the Final Order, when applicable) and the terms thereof, this Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to entry of the Interim Order (or the Final Order, when applicable) and the terms thereof, this Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (a) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and (b) that rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability (regardless of whether enforcement is sought by proceedings in equity or at law).

Section 5.05. *Financial Condition; No Material Adverse Effect.*

(a) *Audited Financial Statements*. The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein and (ii) fairly present in all material respects the financial condition of the Borrower as of the date thereof and its results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) *Interim Financial Statements*. The unaudited balance sheet of the Borrower as of September 26, 2010, and the related statement of income for the nine-month period then ended, copies of which have been delivered to each of the Lenders, fairly present in all material respects, in conformity with GAAP applied on a basis consistent with the financial statements referred to in subsection (a) of this Section 5.05 (except for the absence of footnotes and normal year-end audit adjustments), the financial position of the Borrower as of such date and its results of operations for such forty-week period (subject to normal year-end audit adjustments).

(c) *Material Adverse Change*. Since March 30, 2011, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

(d) *Projections.* The projections prepared as part of, and included in, the Initial Approved Budget and each other Updated Budget (including each Subsequent Approved Budget) have been prepared in good faith and based upon assumptions believed to be reasonable at the time made, it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material.

Section 5.06. *Litigation.* Except as specifically disclosed in Schedule 5.06, there are no unstayed actions, suits, investigations or legal, equitable, arbitration or administrative proceedings pending or, to the knowledge of any Loan Party, threatened against or affecting any Group Company in which there is a reasonable possibility of an adverse decision that would reasonably be expected to result in a Material Adverse Effect.

Section 5.07. *No Default.* No Group Company is in default under or with respect to any post-petition Contractual Obligation that could reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement.

Section 5.08. *Ownership of Property; Liens.* Subject to entry of the Interim Order (or the Final Order, when applicable) and the terms thereof, the Group Companies, in the aggregate, have good and marketable title to, or valid leasehold interests or license in, all its properties and assets, except for Permitted Liens and minor defects in title that do not interfere with its ability to conduct its business as currently conducted and to the extent that would not reasonably be expected to result in a Material Adverse Effect.

Section 5.09. *Environmental Compliance.* No Group Company has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license or other approval required under any Environmental Law or is subject to any Environmental Liability in any case which, individually or collectively, could reasonably be expected to result in a Material Adverse Effect or has received written notice of any claim with respect to any Environmental Liability the subject of which notice could reasonably be expected to have a Material Adverse Effect, and no Group Company knows of any basis for any Environmental Liability against any Group Company that would reasonably be expected to have a Material Adverse Effect.

Section 5.10. *Insurance.* The properties of each Group Company are insured with financially sound and reputable insurance companies not Affiliates of the Borrower, in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are prudent in the reasonable business judgment of the Borrower's officers.

Section 5.11. *Taxes.*

(a) Each Group Company has filed, or caused to be filed, all federal and material state, local and foreign tax returns required to be filed and paid (i) all amounts of taxes shown thereon

to be due (including interest and penalties) and (ii) all other material taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangible taxes) owing by it, except for such taxes (A) which are not yet delinquent, (B) that are being contested in good faith and by proper proceedings diligently pursued, and against which adequate reserves are being maintained in accordance with GAAP or (C) the failure to pay would not reasonably be expected to result in a Material Adverse Effect. No Loan Party knows of any pending investigation of such party by any taxing authority or proposed tax assessments against any Group Company that would, if made, have a Material Adverse Effect. All amounts have been withheld by each Group Company from their respective employees for all periods in compliance with the tax, social security and unemployment withholding provisions of the applicable law and such withholdings have been timely paid to the respective Governmental Authorities, except to the extent that the failure to withhold and pay would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) No Group Company has ever "participated" in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4, except as would not reasonably be expected to have, in any case, individually or in the aggregate, a Material Adverse Effect.

Section 5.12. *ERISA; Foreign Pension Plans; Employee Benefit Arrangements.* Except as disclosed in Schedule 5.12:

(a) *ERISA*. (i) There are no Unfunded Liabilities in excess of the Threshold Amount (A) with respect to any member of the Group Companies and (B) except as would not reasonably be expected to have a Material Adverse Effect, with respect to any ERISA Affiliate.

(ii) Each Plan, other than a Multiemployer Plan, complies in all respects with the applicable requirements of ERISA and the Code, and each Group Company complies in all respects with the applicable requirements of ERISA and the Code with respect to all Multiemployer Plans to which it contributes and all Employee Benefit Arrangements, except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

(iii) Except as would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan maintained by any member of the Group Companies and, except to the extent that such ERISA Event would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or, subject to the passage of time, is reasonably expected to occur with respect to any Plan maintained by an ERISA Affiliate.

(iv) Except as would not reasonably be expected to have a Material Adverse Effect, no Group Company: (A) is or has been within the last six years a party to any Multiemployer Plan; or (B) has completely or partially withdrawn from any Multiemployer Plan.

(v) If any Group Company or any ERISA Affiliate were to incur a complete withdrawal (as described in Section 4203 of ERISA) from any Multiemployer Plan as of the Closing Date, the aggregate withdrawal liability, as determined under Section 4201 of ERISA, with respect to all such Multiemployer Plans would not exceed an amount that would reasonably be expected to have a Material Adverse Effect.

(vi) No Group Company has any contingent liability with respect to any post-retirement benefit under a Welfare Plan that would reasonably be expected to have a Material Adverse Effect.

(b) *Foreign Pension Plans*. Each Foreign Pension Plan has been maintained in material compliance with its terms and with the requirements of any and all applicable Laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities except to the extent that the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect. No Group Company has incurred any obligation in an amount that would reasonably be expected to have a Material Adverse Effect in connection with the termination of or withdrawal from any Foreign Pension Plan.

(c) *Employee Benefit Arrangements*. (i) All liabilities under the Employee Benefit Arrangements are (A) funded to at least the minimum level required by Law or, if higher, to the level required by the terms governing the Employee Benefit Arrangements, (B) insured with a reputable insurance company, (C) provided for or recognized in the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01 hereof or (D) estimated in the formal notes to the financial statements most recently delivered to the Administrative Agent pursuant to Section 6.01 hereof, where such failure to fund, insure, provide for, recognize or estimate the liabilities arising under such arrangements could reasonably be expected to have a Material Adverse Effect.

(ii) There are no circumstances which may give rise to a liability in relation to the Employee Benefit Arrangements which are not funded, insured, provided for, recognized or estimated in the manner described in clause (i) above and which could reasonably be expected to have a Material Adverse Effect.

(iii) Each Group Company is in compliance with all applicable Laws, trust documentation and contracts relating to the Employee Benefit Arrangements, except as would not be expected to have a Material Adverse Effect.

Section 5.13. *Subsidiaries; Equity Interests.* Schedule 5.13 sets forth a complete and accurate list as of the Closing Date of all Subsidiaries of Holdings. Schedule 5.13 sets forth as of the Closing Date the jurisdiction of formation of each such Subsidiary. All the outstanding Equity Interests of each Subsidiary of Holdings are validly issued, fully paid and non-assessable (to the extent applicable) and were not issued in violation of the preemptive rights of any shareholder and, as of the Closing Date, those owned by Holdings, directly or indirectly, are free

and clear of all Liens (other than those arising under the Collateral Documents and Permitted Liens).

Section 5.14. *Margin Regulations; Investment Company Act.*

(a) No Group Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation U. No part of the proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" within the meaning of and in violation of Regulation U. If requested by any Lender or the Administrative Agent, Holdings and the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form U-1 referred to in Regulation U. No indebtedness being reduced or retired out of the proceeds of the Loans was or will be incurred for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U or any "margin security" within the meaning of Regulation T. "Margin stock" within the meaning of Regulation U does not constitute more than 25% of the value of the consolidated assets of Holdings and its Consolidated Subsidiaries. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Loans) will violate or result in a violation of the Securities Act, the Exchange Act or Regulation T, U or X.

(b) None of the Group Companies is subject to regulation under the Federal Power Act or the Investment Company Act of 1940, each as amended. In addition, none of the Group Companies is (i) an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, or (ii) controlled by such a company.

Section 5.15. *Disclosure.* No report, financial statement, certificate or other information (other than general market data not prepared by, or specific to, the Group Companies, forecasted budgets and projections) furnished concerning or affecting any Group Company by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished), when taken as a whole, contains as of the date furnished any material misstatement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading in light of the circumstances under which they were made; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time made (it being understood and agreed that projections as to future events are not to be viewed as facts or guaranties of future performance, that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material and that the Loan Parties make no representation that such projections will in fact be realized).

Section 5.16. *Compliance with Law.* Each Group Company is in compliance with all requirements of Law (including Environmental Laws) applicable to it or to its properties, except for any such failure to comply which could not reasonably be expected to cause a Material Adverse Effect. To the knowledge of the Loan Parties, none of the Group Companies or any of their respective material properties or assets is subject to or in default with respect to any judgment, writ, injunction, decree or order of any court or other Governmental Authority which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. As of the Closing Date, except as disclosed in Schedule 5.16, none of the Group Companies has received any written communication from any Governmental Authority that alleges that any of the Group Companies is not in compliance in any material respect with any Law, except for allegations that have been satisfactorily resolved and are no longer outstanding or which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.17. *Intellectual Property.* Except as set forth on Schedule 5.17, each Group Company owns, or possesses the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other rights that are reasonably necessary for the operation of its respective business, without conflict with the rights of any other Person except for those conflicts which could not reasonably be expected to have a Material Adverse Effect.

Section 5.18. *Purpose of Loans.* The proceeds of the Term Loans will be used solely to provide for the working capital requirements and general corporate purposes of the Loan Parties, including, without limitation, the payment of (A) fees, costs and expenses incurred in the administration of the Cases, (B) fees, costs and expenses incurred by the Loan Parties in connection with this Agreement and the other Loan Documents and (C) such pre-petition obligations as the Bankruptcy Court shall approve.

Section 5.19. *Collateral Documents*.

(a) *Article 9 Collateral*. Each of the Security Agreement and the Pledge Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Lenders, a legal, valid and enforceable security interest in the Collateral described therein and, when financing statements in appropriate form are filed in the offices specified on Schedule 4.01 to the Security Agreement and the Pledged Collateral is delivered to the Collateral Agent, each of the Security Agreement and the Pledge Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such of the Collateral in which a security interest can be perfected under Article 9 of the UCC by filing or by possession or control thereof, in each case superior in right to any other Person, other than with respect to Permitted Liens, and except for certain items of Collateral with respect to which such Lien may be perfected only by possession or control thereof and the failure of the Collateral Agent to have possession or control thereof is expressly permitted pursuant to the Security Agreement and/or Pledge Agreement or any other Loan Document, as applicable.

(b) *Intellectual Property*. When financing statements in the appropriate form are filed in the offices specified on Schedule 4.01 to the Security Agreement, the Assignment of Patents and Trademarks, substantially in the form of Exhibit A to the Security Agreement, is filed in the United States Patent and Trademark Office and the Assignment of Copyrights, substantially in the form of Exhibit B to the Security Agreement, is filed in the United States Copyright Office, then to the extent that Liens and security interests may be perfected by such filings, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the United States patents, trademarks, copyrights, licenses and other intellectual property rights covered in such Assignments, in each case prior and superior in right to any other Person (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on registered trademarks, trademark applications and copyrights acquired by the Loan Parties after the Closing Date).

(c) *Status of Liens*. The Collateral Agent, for the ratable benefit of the Lenders, will at all times have the Liens provided for in the Collateral Documents and, subject to the filing by the Collateral Agent of continuation statements to the extent required by the UCC and to the qualifications and limitations set forth in clauses (a) and (b) above, the Collateral Documents will at all times constitute valid and continuing liens of record and first priority perfected security interests in all the Collateral referred to therein, except as priority may be affected by Permitted Liens.

(d) *Orders*. Notwithstanding anything to the contrary contained herein, upon entry of the Interim Order (or the Final Order, when applicable), the Collateral Agent shall have a fully perfected Lien on, and security interest in, to and under all rights, title and interest of each pledgor thereunder in such Collateral having the priority as set forth in such Order, and such security interest is in each case prior and superior in right and interest to any other Person, subject to the terms of Section 2.16 and the Orders.

Section 5.20. *Ownership of Securities of the Borrower*. Holdings owns good, valid and marketable title to all the outstanding common stock of the Borrower, free and clear of all Liens of every kind, whether absolute, matured, contingent or otherwise, other than those securing the Pre-Petition First Lien Credit Obligations or the Pre-Petition Second Lien Credit Obligations and Permitted Liens described in clause (c) or (o) of Section 7.02. Except as set forth on Schedule 5.20, as of the Closing Date there are no shareholder agreements or other agreements pertaining to Holdings' beneficial ownership of the common stock of the Borrower, including any agreement that would restrict Holdings' right to dispose of such common stock and/or its right to vote such common stock.

Section 5.21. *No Broker's Fees.* No broker's or finder's fee or commission will be payable by any Loan Party with respect to transactions contemplated by this Agreement, except as payable to the Lead Arranger, the Agents and the Lenders.

ARTICLE 6
AFFIRMATIVE COVENANTS

Each of Holdings and the Borrower agrees that so long as any Lender has any Commitment hereunder, any Senior Credit Obligation or other amount payable hereunder or under any Note or other Loan Document (in each case other than contingent indemnification obligations) remains unpaid:

Section 6.01. *Financial Statements.* The Borrower will deliver to the Administrative Agent for further distribution to each Lender (or directly to each Lender at any time when there is not an incumbent Administrative Agent):

(a) *Annual Financial Statements*. Not later than May 30, 2011, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of the fiscal year ending January 2, 2011, the related consolidated statements of operations and shareholders' equity and a consolidated statement of cash flows for such fiscal year, setting forth in each case in comparative form the consolidated figures for the preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of a "Big Four" accounting firm or other Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualification or exception as to the scope of such audit or other material qualification or exception (other than a "going concern" qualification), *provided*, that the obligations in this paragraph (a) may be satisfied by the Borrower by furnishing its Form 10-K.

(b) *Interim Financial Statements*. (x) Within 50 days after the end of the first three fiscal quarters of Holdings, and (y) within 45 days after the end of each fiscal month (commencing with the fiscal month of April 2011) which does not coincide with the end of a fiscal quarter of Holdings, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of such period, together with related consolidated statements of operations and a consolidated statement of cash flows for such period and the then elapsed portion of such fiscal year, setting forth for all periods in comparative form the consolidated figures for the corresponding periods of the preceding fiscal year, all in reasonable detail, certified by a Responsible Officer of the Borrower as fairly presenting, in all material respects, the financial condition, results of operations and cash flows of Holdings and its Consolidated Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and bankruptcy-related adjustments, *provided* that the quarterly (but not monthly) obligations in this paragraph (b) may be satisfied by the Borrower by furnishing its Form 10-Q.

(c) *Additional Reporting*. (i) On each Wednesday of each calendar week a report showing aggregate weekly store sales statistics for the most recently completed calendar week with a comparison to the corresponding week of the preceding year, (ii) on April 6, 2011, the Actual Versus Forecast Report for the period ended March 27, 2011 and (iii) on April 13, 2011,

the Actual Versus Forecast Report for the period ended April 3, 2011 (for the avoidance of doubt, each calendar week ends on Sunday).

(d) *Budget*. On the last Business Day of each month, commencing on April 29, 2011, an update and extension of the Initial Approved Budget in substantially the same form (including the assumptions and methodology made or used therein) as the Initial Approved Budget covering the following 13-week period (each such update and extension, an "**Updated Budget**"). For purposes of this Agreement, (x) the 3rd, 6th and 9th Updated Budgets are each referred to as a "**Subsequent Approved Budget**" and (y) each of the Initial Approved Budget and the Subsequent Approved Budgets is referred to herein as an "**Approved Budget**" and, with respect to any week, the Approved Budget that is applicable to such week for purposes of Section 7.16 shall be the first Approved Budget that covers such week.

(e) *Variance Report*. Commencing Friday April 22, 2011 and on each Friday thereafter, (x) a variance report certified by the chief financial officer of the Borrower, in form reasonably acceptable to the Administrative Agent and the Required Lenders in their sole discretion, setting forth (i) the actual cash receipts, expenditures and disbursements for the calendar week ending 12 days earlier (e.g. April 10, 2011 with respect to the report delivered on April 22, 2011) on a line-item basis and the aggregate liquidity as of the end of such calendar week and (ii) the variance in dollar amounts of the actual expenditures and disbursements (including debt service, professional fees and capital expenditures) for each weekly period from those reflected for the corresponding period in the then-effective Approved Budget and (y) an analysis, certified by a Responsible Officer of the Borrower, demonstrating compliance with Section 7.16 for such week (if applicable) and Section 7.17 for such month (if applicable).

(f) *Additional Monthly Financial Statements*. Not later than April 15, 2011, a consolidated balance sheet of Holdings and its Consolidated Subsidiaries as of the end of each of fiscal January 2011 and fiscal February 2011, in each case together with related consolidated statements of operations and a consolidated statement of cash flows for such period and the then elapsed portion of fiscal year 2011, setting forth for all periods in comparative form the consolidated figures for the corresponding periods of the preceding fiscal year, all in reasonable detail, certified by a Responsible Officer of the Borrower as fairly presenting, in all material respects, the financial condition, results of operations and cash flows of Holdings and its Consolidated Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

Section 6.02. *Certificates; Other Information.* The Borrower will deliver to the Administrative Agent for further distribution to each Lender (or directly to each Lender at any time when there is not an incumbent Administrative Agent):

(a) [Reserved].

(b) *Responsible Officer's Certificate*. (i) At the time of delivery of each variance report provided for in Section 6.01(e), a duly completed certificate signed by a Responsible

Officer of the Borrower stating that no Default or Event of Default exists, or if any Event of Default does exist, specifying the nature and extent thereof and what action the Borrower proposes to take with respect thereto; and (ii) at the time of delivery of the annual financial statements provided for in Section 6.01(a) and the quarterly financial statements provided for in Section 6.01(b), a duly completed certificate signed by a Responsible Officer of Holdings stating whether, since the date of the most recent annual or quarterly financial statements delivered pursuant to Section 6.01(a) or 6.01(b), there has been any material change in the GAAP applied in the preparation of the financial statements of Holdings and its Consolidated Subsidiaries, and, if so, describing such change.

(c) *Auditor's Reports*. Promptly after any request by the Administrative Agent (or by any Lender communicated through the Administrative Agent), copies of any final detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Group Company by independent accountants in connection with the accounts or books of any Group Company, or any audit of any of them.

(d) *Reports to Holders of Debt Securities.* Promptly after the furnishing thereof, copies of any statement or report furnished of any holder of debt securities of any Group Company pursuant to the Pre-Petition Senior Notes Documents or any other indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02.

(e) [Reserved].

(f) *ERISA Reports*. Promptly upon request by the Administrative Agent, the most recently prepared actuarial reports in relation to any Plan or Foreign Pension Plan for the time being operated by Group Companies which are prepared in order to comply with the then current statutory or auditing requirements within the relevant jurisdiction. Promptly upon request, the Borrower shall also furnish the Administrative Agent and the Lenders with such additional information concerning any Plan, Foreign Pension Plan or Employee Benefit Arrangement as may be reasonably requested, including, but not limited to, with respect to any Plans, copies of each annual report/return (Form 5500 series), as well as all schedules and attachments thereto required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA and the Code, respectively, for each "plan year" (within the meaning of Section 3(39) of ERISA).

(g) *Court Documents.* As soon as practicable in advance of filing with the Bankruptcy Court or delivery to any Committee or the U.S. Trustee, as the case may be, a copy of the Final Order and (ii) substantially simultaneously with the filing with the Bankruptcy Court or delivery to any Committee or the U.S. Trustee, as the case may be, all other proposed orders and pleadings related to the Loans and the Loan Documents, any Reorganization Plan and/or any Disclosure Statement related thereto, and all other notices, filings, motions, pleadings or other information concerning the financial condition of the Borrower or any of its Subsidiaries or other

Indebtedness of any Loan Party that may be filed with the Bankruptcy Court or delivered to any Committee or to the U.S. Trustee.

(h) *Domestication in Other Jurisdiction*. Not less than 30 days after any change in the jurisdiction of organization of any Loan Party, a copy of all documents and certificates intended to be filed or otherwise executed to effect such change.

(i) *Maintenance of Ratings*. The Borrower shall use commercially reasonable efforts (x) to secure ratings on the credit facility provided hereunder within 60 days following the Closing Date and (y) thereafter, to maintain ratings on the credit facility provided hereunder, in each case from Moody's and S&P.

(j) *Other Information*. With reasonable promptness upon request therefor, such other information regarding the business, properties or financial condition of any Group Company as the Administrative Agent or any Lender may reasonably request, which may include such information as any Lender may reasonably determine is necessary or advisable to enable it either (i) to comply with the policies and procedures adopted by it and its Affiliates to comply with the Bank Secrecy Act, the U.S. Patriot Act and all applicable regulations thereunder or (ii) to respond to requests for information concerning Holdings and its Subsidiaries from any governmental, self-regulatory organization or financial institution in connection with its anti-money laundering and anti-terrorism regulatory requirements or its compliance procedures under the U.S. Patriot Act, including in each case information concerning the Borrower's direct and indirect shareholders and its use of the proceeds of the Credit Extensions hereunder.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or Intranet website, if any, to which the Administrative Agent has access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); *provided* that: (i) the Borrower shall deliver copies (which may be electronic) of such documents to the Administrative Agent which so requests until a written request to cease delivering copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent (and each Lender if there is at the time no incumbent Administrative Agent) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents. Furthermore, if any financial statement, certificate or other information required to be delivered pursuant to Section 6.01 or 6.02 shall be required to be delivered on any date that is not a Business Day, such financial statement, certificate or other information may be delivered to the Administrative Agent on the next succeeding Business Day after such date.

Each of Holdings and the Borrower hereby acknowledges that (i) the Administrative Agent and/or the Lead Arranger will make available to the Lenders materials and/or information provided by or on behalf of Holdings and the Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "**Platform**") and (ii) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to Holdings, the Borrower or their respective securities) (each, a "**Public Lender**"). Each of Holdings and the Borrower hereby agrees that so long as Holdings or the Borrower is the issuer of any outstanding debt or equity securities that are issued pursuant to a public offering registered with the SEC or in a private placement for resale pursuant to Rule 144A under the Securities Act or is actively contemplating issuing any such securities: (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," each of Holdings and the Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arranger and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Holdings or the Borrower or its or their securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor"; and (iv) the Administrative Agent and the Lead Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor. Notwithstanding the foregoing, Holdings and the Borrower shall be under no obligation to mark any Borrower Materials "PUBLIC."

Section 6.03. *Notices.* The Borrower will promptly notify the Administrative Agent (and each Lender if there is then no incumbent Administrative Agent), and the Administrative Agent will in turn notify the Lenders:

(a) of the occurrence of any Default or Event of Default;

(b) of (i) any breach or non-performance of, or any default under, any material post-petition Contractual Obligation of the Borrower or any of its Subsidiaries, (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any of its Subsidiaries and any Governmental Authority, (iii) the commencement of, or any material adverse development in, any litigation or proceeding affecting the Borrower or any of its Subsidiaries, including pursuant to any applicable Environmental Law, (iv) any litigation, investigation or proceeding affecting any Loan Party, (v) and any other matter, event or circumstance, in each case of subclauses (i) through (v) to the extent that the same have resulted or could reasonably be expected to result in a Material Adverse Effect;

(c) of the occurrence of any ERISA Event to the extent that such ERISA Event has resulted or could reasonably be expected to result in a liability of a Group Company in excess of $1,000,000;

(d) of any material change in accounting policies or financial reporting practice by Holdings or any of its Subsidiaries;

(e) of notices delivered by the Borrower under the Pre-Petition First Lien Credit Agreement or the Pre-Petition Second Lien Credit Agreement that would not otherwise give rise to a notice requirement hereunder; and

(f) of any amendments, restatements, supplements or other modifications to the Pre-Petition First Lien Loan Documents, the Pre-Petition Second Lien Loan Documents or the Pre-Petition Second Lien Transaction Documents.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement or the other Loan Documents that have been breached.

Section 6.04. *Payment of Post-Petition Obligations.* Each of the Group Companies will pay and discharge all material post-petition taxes, assessments and other governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become more than 90 days delinquent; *provided, however*, that no Group Company shall be required to pay any such tax, assessment, charge, levy, claim or Indebtedness (a) which is being contested in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP or (b) the failure to make any such payment could not reasonably be expected to have a Material Adverse Effect.

Section 6.05. *Preservation of Existence Etc.* Except as a result of or in connection with a dissolution, merger or disposition of a Subsidiary of the Borrower permitted under Section 7.04 or Section 7.05, each Group Company will: (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except in the case of clause (a) or (b) to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

Section 6.06. *Maintenance of Properties.* Each Group Company will: (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and Casualty and Condemnation excepted; and (b) make all necessary repairs thereto and renewals and

replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 6.07. *Maintenance of Insurance; Certain Proceeds.*

(a) *Insurance Policies*. Each of the Group Companies will at all times maintain in full force and effect insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risk and liabilities and with such deductibles or self-insurance retentions as are prudent in the good faith judgment of the officers of the Borrower. Not later than 30 days following the Closing Date, the Collateral Agent, shall be named as loss payees or mortgagees, as its interest may appear, with respect to all such property and casualty policies and additional insured with respect to all business interruption or liability policies (other than worker's compensation, director and officer liability or other policies in which such endorsements are not customary), and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that if the insurance carrier shall have received written notice from the Collateral Agent of the occurrence and continuance of an Event of Default, the insurance carrier shall pay all proceeds otherwise payable to the Borrower or one or more of its Subsidiaries under such policies directly to the Collateral Agent and that it will give the Collateral Agent 10 days' prior written notice before any such policy or policies shall be altered or canceled, and that no act or default of any Group Company or any other Person shall affect the rights of the Collateral Agent or the Lenders under such policy or policies.

(b) *Loss Events*. In case of any Casualty or Condemnation with respect to any property of any Group Company or any part thereof having a fair market value in excess of the Threshold Amount, the Borrower shall promptly give written notice thereof to the Administrative Agent generally describing the nature and extent of such damage, destruction or taking.

(c) *Endorsements*. Within 30 days of the Closing Date (or such longer period of time as may be agreed to in writing by the Collateral Agent acting in its sole discretion) the Borrower shall deliver to the Collateral Agent evidence reasonably satisfactory to the Collateral Agent that the liability insurance policies have been endorsed to add the Collateral Agent as additional insured.

Section 6.08. *Compliance with Laws.* Each of the Group Companies will comply with all requirements of Law (including all Environmental Law) applicable to it and its properties to the extent that noncompliance with any such requirement of Law would reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, each of the Group Companies will do each of the following as it relates to any Plan maintained by, or Multiemployer Plan contributed to by, each of the Group Companies, Foreign Pension Plan or Employee Benefit Arrangement except to the extent that any failure to comply with clauses (a) through (e) below would not reasonably be expected to result in a Material Adverse Effect: (a) maintain each Plan (other than a Multiemployer Plan), Foreign Pension Plan and Employee Benefit Arrangement in compliance in all respects with the applicable provisions of ERISA, the

Code or other Federal, state or foreign Law; (b) cause each Plan (other than a Multiemployer Plan) that is qualified under Section 401(a) of the Code to maintain such qualifications; (c) make all required contributions to any Plan subject to Section 412 of the Code and make all required contributions to Multiemployer Plans; (d) ensure that there are no Unfunded Liabilities in excess of the Threshold Amount unless the aggregate amount of such Unfunded Liabilities is reduced below the Threshold Amount within a 30-day period; and (e) make all contributions (including any special payments to amortize any Unfunded Liabilities) required to be made in accordance with all applicable laws and the terms of each Foreign Pension Plan in a timely manner.

Section 6.09. *Books and Records.* Each of the Group Companies will keep books and records of its transactions that are complete and accurate in all material respects in accordance with GAAP (including the establishment and maintenance of appropriate reserves).

Section 6.10. *Inspection Rights.* Each of the Group Companies will (but, if no Default or Event of Default shall have occurred and be continuing, not more often than twice per fiscal year at the Borrower's expense) permit representatives and independent contractors of the Administrative Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (and each Loan Party hereby authorizes, and each of Holdings and the Borrower shall cause each other Group Company which is not a Loan Party to authorize, such independent accountants to discuss its affairs, finances and accounts with the Administrative Agent or any representative or independent contractor thereof; *provided* that a representative of such or any other Loan Party has been given the opportunity to be present), all at such reasonable times during normal business hours and as often as may be reasonably desired, upon two (2) Business Days' advance notice to the Borrower; *provided, however*, that when an Event of Default exists the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

Section 6.11. *Use of Proceeds.* The Borrower will use the proceeds of the Loans solely for the purposes set forth in Section 5.18.

Section 6.12. *Additional Loan Parties; Additional Security.*

(a) *Additional Subsidiary Guarantors*. The Borrower will take, and will cause each of its Subsidiaries (other than Foreign Subsidiaries) to take, such actions from time to time as shall be necessary to ensure that all Subsidiaries of the Borrower (other than such Foreign Subsidiaries) are Subsidiary Guarantors. Without limiting the generality of the foregoing, if any Group Company shall form or acquire any new Subsidiary, the Borrower, as soon as practicable and in any event within 30 days after such formation or acquisition, will provide the Collateral Agent with notice of such formation or acquisition setting forth in reasonable detail a description of all of the assets of such new Subsidiary and will cause such new Subsidiary (other than any such Foreign Subsidiary) to:

(i) within 30 days after such formation or acquisition, execute an Accession Agreement pursuant to which such new Subsidiary shall agree to become a "Guarantor" under the Subsidiary Guaranty, an "Obligor" under the Security Agreement and an "Obligor" under the Pledge Agreement and/or an obligor under such other Collateral Documents as may be applicable to such new Subsidiary; and

(ii) deliver such proof of organizational authority, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Loan Party pursuant to Section 4.01 on the Closing Date or as the Administrative Agent or the Collateral Agent shall have reasonably requested.

(b) *Additional Security*. The Borrower will cause, and will cause each of its Subsidiaries (other than Foreign Subsidiaries) to cause, all of its owned Real Properties with a fair market value in excess of $2,000,000 hereafter acquired and all or substantially all personal property located in the United States to be subject at all times to perfected and, in the case of owned Real Property, title insured Liens in favor of the Collateral Agent pursuant to the Collateral Documents or such other security agreements, pledge agreements, mortgages or similar collateral documents as the Collateral Agent shall request in its sole reasonable discretion (collectively, the "**Additional Collateral Documents**"). With respect to any owned Real Property having a fair market value in excess of $2,000,000 acquired by any Loan Party subsequent to the Closing Date, such Person will cause to be delivered to the Collateral Agent with respect to such Real Property mortgages, deeds of trust or other appropriate instruments under applicable law sufficient to create a mortgage, deed of trust or similar Lien of record on such Real Property and including landlords' consents and estoppels, ALTA or other appropriate forms of mortgagee title insurance policies, maps or plats of survey, flood insurance certificates and other instruments, certificates and documents, as are in form and substance reasonably satisfactory to the Collateral Agent. In furtherance of the foregoing terms of this Section 6.12, the Borrower agrees to promptly provide the Administrative Agent with written notice of the acquisition by the Borrower or any of its Subsidiaries (other than Foreign Subsidiaries) of any owned Real Property having a market value greater than $2,000,000, setting forth in each case in reasonable detail the location and a description of the asset(s) so acquired. Without limiting the generality of the foregoing, the Borrower will cause, and will cause each of its Subsidiaries that

is or becomes a Subsidiary Guarantor to cause, 100% of the Equity Interests of each of their respective direct and indirect Domestic Subsidiaries that are not Subsidiaries of Foreign Subsidiaries or (x) 65% of such Equity Interests, if such Subsidiary is a direct Foreign Subsidiary, or (y) to the extent not prohibited by the terms of any Organization Document or other agreement governing a Permitted Joint Venture, such percentage as is equal to their respective ratable ownership of all Equity Interests in Permitted Joint Ventures and non-Wholly-Owned Subsidiaries) to be subject at all times to a first priority, perfected Lien in favor of the Collateral Agent, subject only to Permitted Liens described in Section 7.02(c) or (d).

If, subsequent to the Closing Date, a Loan Party shall acquire any material patents, trademark registrations, service mark registrations, registered trade names, copyright registrations or any applications related to the foregoing, securities, instruments, chattel paper or other personal property required to be delivered to the Collateral Agent as Collateral hereunder or under any of the Collateral Documents, the Borrower shall promptly (and in any event within ten Business Days after any Responsible Officer of any Loan Party acquires knowledge of the same) notify the Collateral Agent of the same.

All such security interests and mortgages shall be granted pursuant to documentation consistent with the Collateral Documents executed on the Closing Date and otherwise reasonably satisfactory in form and substance to the Collateral Agent and shall constitute valid and enforceable perfected security interests and mortgages and subject to no other Liens except for Permitted Liens. The Additional Collateral Documents or instruments related thereto shall have been duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Collateral Documents, and all taxes, fees and other charges payable in connection therewith shall have been paid in full. The Borrower shall cause to be delivered to the Collateral Agent such opinions of counsel, title insurance and other related documents as may be reasonably requested by the Collateral Agent to assure itself that this Section 6.12(b) has been complied with.

(c) *Real Property Appraisals*. If the Collateral Agent determines that it or the Lenders are required by Law or regulation to have appraisals prepared in respect of the Real Property of any Group Company constituting Collateral, the Borrower shall provide to the Collateral Agent appraisals which satisfy the applicable requirements set forth in 12 C.F.R., Part 34 - Subpart C or any successor or similar statute, rule, regulation, guideline or order, and which shall be in scope, form and substance, and from appraisers, reasonably satisfactory to the Required Lenders and shall be accompanied by a certification of the appraisal firm providing such appraisals that the appraisals comply with such requirements.

(d) *Completion of Actions*. The Borrower agrees that each action required by this Section 6.12 shall be completed no later than 45 days (or such later date as determined by the Administrative Agent) after such action is either requested to be taken by the Collateral Agent or required to be taken by the Borrower or any of its Subsidiaries pursuant to the terms of this Section 6.12.

Notwithstanding the foregoing, any assets acquired subsequent to the Closing whose relative value to the Lenders does not justify the cost and/or effort required to obtain security interests in such assets, as reasonably determined by the Lead Arranger (in consultation with the Borrower), shall not be subject to the requirements hereof. In addition, notwithstanding anything to the contrary contained herein or in any other Loan Document, in no event shall any Loan Party be required to (a) deliver control, lockbox or similar type agreements with respect to any local depository account or (b) leasehold mortgages, estoppels, consents or landlord waivers with respect to any retail establishment.

Section 6.13. *Further Assurances*. The Borrower shall, at the Borrower's cost and expense and upon request of the Administrative Agent, execute and deliver or cause to be executed and delivered, to the Administrative Agent such further instruments, documents and certificates, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents.

Section 6.14. *Deposit and Security Accounts*. Each Loan Party shall cause each of its lockboxes, deposit accounts and securities accounts (other than Exempt Deposit Accounts) to be subjected and to remain subjected to an account control agreement, in form and substance reasonably satisfactory to the Administrative Agent, properly executed by such Loan Parties, the applicable bank or other financial institution at which such lockbox, deposit account and securities account is maintained and the Collateral Agent (or, in the case of such lockboxes, deposit accounts and securities accounts in existence on the Petition Date, the Pre-Petition First Lien Collateral Agent).

ARTICLE 7
NEGATIVE COVENANTS

Each of Holdings and the Borrower agrees that so long as any Lender has any Commitment hereunder, any Senior Credit Obligation or other amount payable hereunder or under any Note or other Loan Document (in each case other than contingent indemnification obligations) remains unpaid:

Section 7.01. *Limitation on Indebtedness.* None of the Group Companies will incur, create, assume or permit to exist any Indebtedness except:

(a) Indebtedness of the Borrower and its Subsidiaries incurred prior to the Petition Date and disclosed on Schedule 7.01 (collectively, the "**Pre-Petition Indebtedness**");

(b) Indebtedness of the Loan Parties under this Agreement and the other Loan Documents;

(c) Purchase Money Indebtedness, Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations of the Borrower and its Subsidiaries incurred after the Petition Date to finance Consolidated Capital Expenditures and Attributable Indebtedness in respect of Sale/Leaseback Transactions of the Borrower and its Subsidiaries permitted pursuant to Section 7.13; *provided* that (x) the aggregate amount of all such Indebtedness does not exceed $500,000 at any time outstanding and (y) no Lien securing such Indebtedness shall extend to or cover any property or asset of any Group Company other than the asset so financed and proceeds thereof;

(d) [reserved];

(e) any Permitted Refinancing of Indebtedness permitted under clause (c) above; *provided* that (u) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so refinanced except by an amount equal to any interest capitalized in connection with, any premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing, (v) such refinancing Indebtedness has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being refinanced, (w) such refinancing Indebtedness shall not be secured by any Lien unless the Indebtedness being refinanced was subject to a Lien permitted hereunder, in which case any Liens on such refinancing indebtedness shall not extend to any additional assets and shall, if the existing Liens were subordinated, be subordinated on no less favorable terms, (x) the terms and conditions (including, if applicable, as to collateral) of any such refinancing Indebtedness are not, taken as a whole, materially less favorable to the Loan Parties or the Lenders than the terms and conditions of the Indebtedness being refinanced, (y) such refinancing, refunding is incurred by the Borrower or by a Subsidiary Guarantor and (z) after giving effect to the incurrence of such refinancing Indebtedness, no Default shall have occurred and be continuing;

(f) Permitted Subordinated Debt of the Borrower or any Subsidiary Guarantor in an aggregate principal amount not to exceed $1,000,000 at any time outstanding;

(g) (i) contingent liabilities in respect of any indemnification, adjustment of purchase price, earn-out, non-compete, consulting, deferred compensation and similar obligations of the Borrower and its Subsidiaries incurred in connection with Permitted Joint Ventures, Investments permitted by Section 7.06 and Asset Dispositions and (A) obligations in respect of earn-outs, purchase price adjustments or similar adjustments incurred by the Borrower or its Subsidiaries under agreements governing Investments permitted by Section 7.06 or Asset Dispositions;

(h) [reserved];

(i) Indebtedness owed to any Person providing property, casualty or liability insurance to the Borrower or any Subsidiary of the Borrower, so long as such Indebtedness shall not be in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such

insurance for the annual period in which such Indebtedness is incurred and such Indebtedness shall be outstanding only during such year;

(j) Indebtedness consisting of Guaranty Obligations incurred (i) by the Borrower in respect of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Investments permitted by Section 7.06 of, Wholly-Owned Domestic Subsidiaries of the Borrower, (ii) by Domestic Subsidiaries of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Investments permitted by Section 7.06 of, the Borrower or Wholly-Owned Domestic Subsidiaries of the Borrower, (iii) by Foreign Subsidiaries of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by, or obligations in respect of Investments permitted by Section 7.06 of, Wholly-Owned Foreign Subsidiaries of the Borrower and (iv) by the Borrower or any Subsidiary of the Borrower of Indebtedness, leases or other ordinary course obligations permitted to be incurred by Foreign Subsidiaries or Permitted Joint Ventures; *provided* that the aggregate amount of Guaranty Obligations referred to in this clause (iv), together with all Investments by the Borrower and its Wholly-Owned Domestic Subsidiaries permitted under Section 7.06(a)(xi), will not exceed $250,000 at any one time outstanding;

(k) intercompany Indebtedness of the Borrower or a Subsidiary of the Borrower to the extent permitted by Section 7.06(a)(x) or (xi);

(l) (i) Indebtedness of Holdings, the Borrower and its Subsidiaries arising from the honoring by a bank or other financial institution of a check, draft, credit or purchase card or similar instrument drawn against insufficient funds in the ordinary course of business; *provided* that (A) such Indebtedness (other than credit or purchase cards) is extinguished within five Business Days after receipt of notice of its incurrence and (B) such Indebtedness in respect of credit or purchase cards is extinguished within 60 days from its incurrence, and (ii) contingent indemnification obligations of the Borrower and its Subsidiaries to financial institutions, in each case to the extent in the ordinary course of business and on terms and conditions which are within the general parameters customary in the banking industry, entered into to obtain cash management services or deposit account overdraft protection services (in amount similar to those offered for comparable services in the financial industry) or other services in connection with the management or opening of deposit accounts or incurred as a result of endorsement of negotiable instruments for deposit or collection purposes;

(m) accretion or amortization of original issue discount and accretion of interest paid in kind, in each case in respect of Indebtedness otherwise permitted by this Section 7.01 (other than Section 7.01(a)); and

(n) Indebtedness of the Borrower and its Subsidiaries not otherwise permitted by this Section 7.01 incurred after the Closing Date in an aggregate principal amount not to exceed $500,000 at any time outstanding.

Section 7.02. *Restriction on Liens.* None of the Group Companies will create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests or other securities of any Person, including the Borrower or any Subsidiary of the Borrower) now owned or hereafter acquired by it or on any income or rights in respect of any thereof, or sign or file or authorize the filing under the Uniform Commercial Code of any jurisdiction of a financing statement that names any Group Company as debtor, or sign any security agreement authorizing any secured party thereunder to file such a financing statement, except Liens described in any of the following clauses (collectively, "**Permitted Liens**"):

(a) Liens existing on the Petition Date and listed on Schedule 7.02 hereto;

(b) Liens created by the Collateral Documents;

(c) Liens for taxes, assessments and other governmental charges or levies (i) not more that 90 days delinquent, (ii) which are being contested in good faith by appropriate proceedings and as to which adequate reserves have been established in accordance with GAAP or (iii) which are not otherwise required to be paid in accordance with Section 6.04;

(d) Liens securing the charges, claims, demands or levies of landlords, carriers, suppliers, warehousemen, materialmen, workmen, mechanics, carriers and other like Liens imposed by Law which were incurred in the ordinary course of business and which (i) do not, individually or in the aggregate, materially detract from the value of the property or assets which are the subject of such Lien or materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries or (ii) which are being contested in good faith by appropriate proceedings diligently pursued for which adequate reserves (in the good faith judgment of the management of the Borrower) have been established in accordance with GAAP, which proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to such Lien;

(e) Liens (other than any Liens imposed by ERISA or pursuant to any Environmental Law) not securing Indebtedness incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security and other similar obligations incurred in the ordinary course of business;

(f) Liens securing obligations in respect of surety bonds (other than appeal bonds), statutory obligations to Governmental Authorities, tenders, sales, contracts (other than for borrowed money), bids, leases, government contracts, indemnity, warranty, release, performance and return-of-money bonds and other similar obligations or with respect to other regulatory requirements, letters of credit, bankers' acceptances issued and completion guarantees incurred in the ordinary course of business for sums not more than 90 days overdue or being contested in good faith by appropriate proceedings and for which the Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP;

(g) Liens upon specific items or inventory or other goods and proceeds of the Borrower or any of its Subsidiaries securing such Person's obligations in respect of bankers' acceptances or documentary letters of credit issued or created for the account of such Person to facilitate the shipment or storage of such inventory or other goods;

(h) pledges or deposits of cash and Cash Equivalents securing deductibles, self-insurance, co-payment, co-insurance, retentions or similar obligations to providers of property, casualty or liability insurance in the ordinary course of business;

(i) Liens on (i) insurance premiums, dividends and rebates and other identifiable proceeds therefrom which may become payable under insurance policies and loss payments which reduce the incurred premiums on such insurance policies and (ii) rights which may arise under State insurance guarantee funds relating to any such insurance policy, in each case securing Indebtedness permitted to be incurred pursuant to Section 7.01(i);

(j) Liens arising solely by virtue of any statutory or common Law provision relating to banker's liens, rights of setoff or similar rights, in each case incurred in the ordinary course of business;

(k) licenses, sublicenses, leases or subleases granted to third Persons or to the Borrower or its Subsidiaries by the Borrower and its Subsidiaries in the ordinary course of business not interfering in any material respect with the business of any Group Company and not otherwise prohibited by Section 7.05(n);

(l) zoning restrictions, building codes, land use and other similar Laws and municipal ordinances, easements, rights of way, licenses, reservations, covenants, conditions, waivers, restrictions on the use of property or other minor encumbrances or irregularities of title not securing Indebtedness which do not, individually or in the aggregate, materially impair the use of any property in the operation or business of the Borrower or any of its Subsidiaries or the value of such property for the purpose of such business;

(m) Liens arising from precautionary UCC financing statements regarding, and any interest or title of a licensor, lessor or sublessor under, Operating Leases permitted by this Agreement;

(n) Liens in favor of licensors, lessors, sublessors, lessees or sublessees securing Operating Leases or other obligations not constituting Indebtedness;

(o) Liens arising from judgments, decrees or attachments (or securing of appeal bonds with respect thereto) in circumstances not constituting an Event of Default under Section 8.01;

(p) Liens securing Indebtedness permitted to be incurred under Section 7.01(c) and (e);

(q) [reserved];

(r) [reserved];

(s) [reserved];

(t) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to an Investment permitted by Section 7.06 or a Permitted Joint Venture; *provided* that the aggregate amount of such cash earnest money deposits shall not exceed $100,000;

(u) [reserved];

(v) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(w) Liens that might be deemed to exist on assets subject to a repurchase agreement permitted hereunder, if such Liens are deemed to exist solely because of the existence of such repurchase agreement;

(x) Liens in favor of Holdings, the Borrower or any Subsidiary Guarantor;

(y) security given to a public or private utility or any other governmental authority in the ordinary course of business;

(z) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of Holdings or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and its Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of its Subsidiaries in the ordinary course of business;

(aa) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(bb) [reserved];

(cc) other Liens securing Indebtedness permitted under Section 7.01 if the aggregate amount of the obligations or liabilities secured thereby does not exceed $500,000 at any time;

(dd) Liens granted on the Collateral pursuant to the Pre-Petition First Lien Loan Documents and the Pre-Petition Second Lien Loan Documents;

(ee) Liens in favor of the Pre-Petition First Lien Lenders as adequate protection granted pursuant to the Interim Order and/or the Final Order; *provided* that such Liens shall be junior to the Liens contemplated by Section 2.16 in favor of the Agents and the Lenders; and

(ff) Liens in favor of the Pre-Petition Second Lien Lenders as adequate protection granted pursuant to the Interim Order and/or the Final Order; *provided* that such Liens shall be junior to (A) the Liens contemplated by Section 2.16 in favor of the Agents and the Lenders and (B) the Liens permitted under clause (ee).

Section 7.03. *Nature of Business.* None of the Group Companies will alter in any material respect the character or conduct of the business conducted by such Person as of the Closing Date and activities directly related thereto and similar, complimentary or related businesses.

Section 7.04. *Consolidation, Merger and Dissolution.* Except in connection with an Asset Disposition permitted by the terms of Section 7.05, none of the Group Companies will enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself or its affairs (or suffer any liquidations or dissolutions); *provided* that:

(a) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, the Borrower, so long as (i) the Borrower is the surviving corporation of such merger, dissolution or liquidation, (ii) the security interests granted to the Collateral Agent for the benefit of the Lenders pursuant to the Collateral Documents and the Interim Order or the Final Order (as applicable) in the assets of the Borrower and such Domestic Subsidiary so merged, dissolved or liquidated shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation) and (iii) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect or as a result of such transaction;

(b) any Domestic Subsidiary of the Borrower may merge with and into, or be voluntarily dissolved or liquidated into, any other Domestic Subsidiary of the Borrower, so long as (i) in the case of any such merger, dissolution or liquidation involving one or more Subsidiary Guarantors, (x) a Subsidiary Guarantor is the surviving corporation of such merger, dissolution or liquidation, (y) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction and (ii) the security interests granted to the Collateral Agent for the benefit of the Lenders pursuant to the Collateral Documents and the Interim Order or the Final Order (as applicable) in the assets of each Domestic Subsidiary so merged, dissolved or liquidated and in the Equity Interests of the surviving entity of such merger, dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation);

(c) any Foreign Subsidiary of the Borrower may be merged with and into, or be voluntarily dissolved or liquidated into, the Borrower or any Wholly-Owned Subsidiary of the Borrower, so long as (A) in the case of any such merger, dissolution or liquidation involving one

or more Subsidiary Guarantor, (x) the Borrower or such Subsidiary Guarantor, as the case may be, is the surviving corporation of any such merger, dissolution or liquidation and (y) no Person other than the Borrower or a Subsidiary Guarantor receives any consideration in respect of or as a result of such transaction and (B) the security interests granted to the Collateral Agent for the benefit of the Lenders pursuant to the Collateral Documents and the Interim Order or the Final Order (as applicable) in the assets of such Foreign Subsidiary, if any, and the Borrower or such other Subsidiary, as the case may be, and in the Equity Interests of the surviving entity of such merger, dissolution or liquidation shall remain in full force and effect and perfected (to at least the same extent as in effect immediately prior to such merger, dissolution or liquidation);

(d) [reserved];

(e) [reserved]; and

(f) Holdings shall be permitted to change its type of organization, whether by merger or otherwise, to a corporation.

In the case of any merger or consolidation permitted by this Section 7.04 of any Subsidiary of Holdings which is not a Loan Party into a Loan Party, the Loan Parties shall cause to be executed and delivered such documents, instruments and certificates as the Administrative Agent may reasonably request so as to cause the Loan Parties to be in compliance with the terms of Section 6.12 after giving effect to such transaction. Notwithstanding anything to the contrary contained above in this Section 7.04, no action shall be permitted (x) which results in a Change of Control or (y) which requires the approval of the Bankruptcy Court (unless such approval shall have been received).

Section 7.05. *Asset Dispositions.* None of the Group Companies will make any Asset Disposition; *provided* that:

(a) any Group Company may sell or otherwise dispose of inventory, equipment and other assets in the ordinary course of business;

(b) any Group Company may make any Asset Disposition to the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower;

(c) Holdings, the Borrower and its Subsidiaries may liquidate or sell Cash Equivalents and Foreign Cash Equivalents;

(d) the Borrower or any of its Subsidiaries may dispose of machinery or equipment which will be replaced or upgraded with machinery or equipment used or useful in the ordinary course of business of and owned by such Person;

(e) the Borrower or any of its Subsidiaries may dispose of obsolete, worn-out or surplus tangible assets in the ordinary course of business;

(f) [reserved];

(g) the Borrower or any Subsidiary of the Borrower may sell, lease or otherwise transfer all or substantially all or any part of its assets (including any such transaction effected by way of merger or consolidation) to the Borrower or any Subsidiary Guarantor;

(h) any Subsidiary that is not a Subsidiary Guarantor may sell, lease or otherwise transfer all or any part of its assets (including any such transaction effected by way of merger or consolidation) to any other Subsidiary that is not a Subsidiary Guarantor;

(i) the Borrower or any Subsidiary of the Borrower may issue Equity Interests in the Borrower or such Subsidiary to qualify directors where required by applicable Law or to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests in Foreign Subsidiaries or Nominal Shares for tax considerations;

(j) any Group Company may transfer assets as a part of the consideration for (i) Investments in Permitted Joint Ventures or (ii) Investments permitted by Section 7.06;

(k) Asset Dispositions effected by transactions permitted under Section 7.04 shall be permitted;

(l) any Group Company may lease, as lessor or sublessor, or license, as licensor or sublicensor, real or personal property in the ordinary course of business;

(m) any Group Company may write off, discount, sell or otherwise dispose of defaulted or past due receivables and similar obligations in the ordinary course of business and not as part of an accounts receivable financing transaction;

(n) any Group Company may, in the ordinary course of business, license and sublicense Intellectual Property;

(o) any Foreign Subsidiary may make Asset Dispositions to any Group Company;

(p) any Group Company may enter into any Sale/Leaseback Transaction not prohibited by Section 7.01 or Section 7.13;

(q) any Group Company may make Asset Dispositions to any other Group Company or Permitted Joint Venture which is not a Subsidiary Guarantor where such Asset Disposition constitutes an Investment permitted by Section 7.06(a);

(r) any Group Company may make Asset Dispositions to any Loan Party;

(s) the Borrower or any of its Subsidiaries may enter into co-marketing or co-branding agreements, distribution agreements and intellectual property licensing agreements in the

ordinary course of business that do not materially interfere with the business of the Borrower or its Subsidiaries;

(t) the Borrower may dispose of stores in the ordinary course of business, in its reasonable business judgment;

(u) any foreclosure by Holdings, the Borrower or any Subsidiary upon any assets subject to a Lien in favor of Holdings, the Borrower or any Subsidiary or the disposition of assets so foreclosed; and

(v) any Group Company may make any other Asset Disposition; *provided* that (i) at least 75% of the consideration therefor is cash or Cash Equivalents; (ii) such transaction does not involve the sale or other disposition of a minority Equity Interest in any Group Company which is a Wholly-Owned Subsidiary; (iii) the aggregate fair market value of all assets sold or otherwise disposed of by the Group Companies in all such transactions in reliance on this clause (v) shall not exceed $10,000,000 in the aggregate; and (iv) no Default or Event of Default is then in existence or would otherwise arise therefrom.

Upon consummation of an Asset Disposition permitted under this Section 7.05 (and, in the case of any such Asset Disposition that requires the approval of the Bankruptcy Court, so long as such approval has been received), the Lien created thereon under the Collateral Documents (but not the Lien on any proceeds thereof) shall be automatically released, and the Administrative Agent shall (or shall cause the Collateral Agent to) (to the extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as is reasonably necessary to evidence the release of the Collateral Agent's security interests, if any, in the assets being disposed of, including amendments or terminations of UCC Financing Statements, if any, the return of stock certificates, if any, and the release of any Subsidiary being disposed of in its entirety from all of its obligations, if any, under the Loan Documents.

Section 7.06. *Investments.*

(a) Investments. None of the Group Companies will hold, make or acquire, any Investment in any Person, except the following:

(i) Investments existing on the Petition Date disclosed on Schedule 7.06 hereto and Investments existing on the date hereof in Persons which are Subsidiaries on the Petition Date;

(ii) Holdings, the Borrower or any Domestic Subsidiary of the Borrower may invest in cash (including cash held in deposit accounts) and Cash Equivalents;

(iii) Foreign Subsidiaries of the Borrower may invest in cash (including cash held in deposit accounts), Cash Equivalents or Foreign Cash Equivalents;

(iv) the Borrower and each Subsidiary of the Borrower may acquire and hold receivables, accounts, notes receivable, chattel paper, payment intangibles and prepaid accounts owing to them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;

(v) the Borrower and each Subsidiary of the Borrower may acquire and own Investments (including obligations evidencing Indebtedness) received in connection with the settlement of accounts in the ordinary course or in connection with the bankruptcy or reorganization of suppliers and customers or in settlement of delinquent obligations of, and other disputes with, customers and suppliers or others arising in the ordinary course of business;

(vi) (A) (i) commissions, payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business and (ii) loans and advances to employees of the Group Companies in the ordinary course of business in an aggregate principal amount not to exceed $100,000 at any one time and (B) loans and advances to franchisees and to Foreign Subsidiaries with respect to items required to operate a restaurant not to exceed $250,000 in the aggregate;

(vii) the Borrower or any Subsidiary may make deposits in the ordinary course of business to secure the performance of operating leases and payment of utility contracts;

(viii) the Borrower or any Subsidiary may make good faith deposits in the ordinary course of business in connection with obligations in respect of surety bonds, appeal bonds, statutory obligations to Governmental Authorities, tenders, sales, contracts (other than for borrowed money), bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business for sums not more than 90 days overdue or being contested in good faith by appropriate proceedings and for which the Borrower and its Subsidiaries maintain adequate reserves in accordance with GAAP;

(ix) loans by the Borrower to officers and employees of the Borrower the proceeds of which are used to purchase Holdings' or its parents' Equity Interests or Holdings' or its parents' Equity Equivalents;

(x) the Borrower may make Investments in any of its Wholly-Owned Domestic Subsidiaries and any Subsidiary of the Borrower may make Investments in the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower;

(xi) the Borrower and its Subsidiaries may make Investments in any Foreign Subsidiary or any non-Wholly-Owned Domestic Subsidiary of the Borrower (A) in the case of Investments by the Borrower or any Wholly-Owned Domestic Subsidiary of the Borrower, in an aggregate amount together with all Guaranty Obligations permitted under

Section 7.01(j)(iv) (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness) at any one time outstanding not exceeding $500,000 and (B) to the extent such Investments arise from the sale of inventory or consisting of the licensing, co-development, co-branding, co-marketing (in each case on a revocable basis) in the ordinary course of business by the Borrower or such Subsidiary to such Foreign Subsidiary or non-Wholly-Owned Domestic Subsidiary for resale by such Foreign Subsidiary or non-Wholly-Owned Domestic Subsidiary (including any such Investments resulting from the extension of the payment terms with respect to such sales);

(xii) (A) Guaranty Obligations permitted by Section 7.01(j) and (B) loans in lieu of any Restricted Payments permitted under Section 7.07(c) or (d);

(xiii) Investments arising out of the receipt by the Borrower or any of its Subsidiaries of non-cash consideration for the sale of assets permitted under Section 7.05;

(xiv) [reserved];

(xv) the Borrower and its Subsidiaries may make Investments in Permitted Joint Ventures in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness), together with any Investments made pursuant to Section 7.06(a)(xxi), at any one time outstanding not exceeding $500,000;

(xvi) the Borrower and its Subsidiaries may in the ordinary course of business make Investments which consist of the licensing or contribution of intellectual property pursuant to marketing, co-branding and co-development agreements that do not materially interfere with the business of the Borrower or its Subsidiaries;

(xvii) any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by Holdings or any of its Subsidiaries;

(xviii) any Person to the extent such Investment consists of loans, guarantees and advances to suppliers, licensees, franchisees or customers of the Borrower or any of the Subsidiaries made in the ordinary course of business; *provided, however*, that the amount of Investments made pursuant to this clause (xviii) do not exceed $1,000,000 at any one time outstanding;

(xix) performance guarantees consistent with past practice;

(xx) any Person where such Investment was acquired by Holdings or any of its Subsidiaries as a result of a foreclosure by Holdings or any of its Subsidiaries with

respect to any secured Investment or other transfer of title with respect to any secured Investment;

(xxi) Borrower or its Subsidiaries may purchase additional equity interests in joint ventures that are, prior to such Investment, at least 51% owned by Borrower or its Subsidiaries so long as subsequent Investments are not required at the time of such Investment in an aggregate amount, together with any Investments made pursuant to Section 7.06(a)(xv), at any time outstanding not exceeding $500,000;

(xxii) Holdings may make contributions to the capital of the Borrower; and

(xxiii) the Borrower and its Subsidiaries may make other Investments not otherwise permitted by this Section 7.06 in an aggregate amount (determined without regard to any write-downs or write-offs of any such Investments constituting Indebtedness) at any time outstanding not exceeding $250,000;

provided that no Group Company may make or own any Investment in Margin Stock in violation of Regulations T, U or X of the Board of Governors of the Federal Reserve System.

(b) *Limitation on the Creation of Subsidiaries*. No Group Company will establish, create or acquire after the Closing Date any Subsidiary.

Section 7.07. *Restricted Payments, Etc*. None of the Group Companies will declare or pay any Restricted Payments (other than Restricted Payments payable solely in Equity Interests (exclusive of Debt Equivalents) of such Person), except that:

(a) any Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower that is a Guarantor or to any other Subsidiary of the Borrower that directly owns Equity Interests in such Wholly-Owned Subsidiary (so long as such Restricted Payments are made ratably to all direct owners of Equity Interests in such Wholly-Owned Subsidiary);

(b) any non-Wholly-Owned Subsidiary of the Borrower may make Restricted Payments to the Borrower or to any Wholly-Owned Subsidiary of the Borrower that is a Guarantor or ratably to all holders of its outstanding Equity Interests;

(c) [reserved];

(d) the Borrower may make cash Restricted Payments to Holdings to enable Holdings to pay, and in amounts not to exceed the amount necessary to pay, (i) the then currently due fees and expenses of Holdings' or its parents' counsel, accountants and other advisors and consultants, reimbursements of fees and other operating and administrative expenses of Holdings or its parent (including employee and compensation expenditures, directors' and officers' insurance premiums and other similar costs and expenses) incurred in the ordinary course of business that are for the benefit of, or are attributable to, or are related to, including the financing or

refinancing of, Holdings' Investment in the Borrower and its Subsidiaries, (ii) [reserved], (iii) dividends, distributions or advances to Holdings or its Subsidiaries to be used by Holdings, its parent or its Subsidiaries to pay (A) federal, state and local taxes payable by Holdings, its parent or its Subsidiaries and directly attributable to (or arising as a result of) the operations of the Borrower and its Subsidiaries and (B) franchise taxes and other fees required to maintain its or its parents' existence;

(e) redemption of stock deemed to occur upon the exercise of stock options or the purchase of stock issued to employees as part of a stock option plan, employee incentive plan or employee benefit plan;

(f) [reserved]; and

(g) the purchase of fractional shares by the Borrower upon conversion of any securities of the Borrower into capital stock of the Borrower.

Section 7.08. *Prepayments of Indebtedness, Etc.*

(a) *Amendments of Certain Agreements*. None of the Group Companies will, or will permit any of their respective Subsidiaries to, after the issuance thereof, amend, waive or modify (or permit the amendment, waiver or modification of) any of the material terms, agreements, covenants or conditions of or applicable to the Pre-Petition Senior Notes Documents or any Permitted Subordinated Debt issued by such Group Company if such amendment, waiver or modification would add or change any material terms, agreements, covenants or conditions in any manner materially adverse, taken as a whole, to any Group Company, or shorten the final maturity or average life to maturity or require any payment to be made sooner than originally scheduled or increase the interest rate payable in cash applicable thereto or change any material provision thereof in a manner that would be materially adverse to the interests of the Senior Credit Parties.

(b) *Prohibition Against Payments of Indebtedness*. None of the Group Companies will directly or indirectly redeem, purchase, prepay, retire, defease or otherwise acquire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Indebtedness (including Indebtedness incurred prior to the Petition Date, but excluding intercompany indebtedness and any refinancing of Indebtedness permitted hereunder), or set aside any funds for such purpose, whether such redemption, purchase, prepayment, retirement or acquisition is made at the option of the maker or at the option of the holder thereof, and whether or not any such redemption, purchase, prepayment, retirement or acquisition is required under the terms and conditions applicable to such Indebtedness except as expressly provided for in the "first day" orders of the Bankruptcy Court entered upon pleadings in the form and substance acceptable to the Administrative Agent.

(c) *Equity Interests.* Without the express written consent of the Administrative Agent, no Equity Interests of Holdings or the Borrower shall be subject to redemption, put, call,

repurchase or similar provision prior to the date which is 90 days after the final Maturity Date for any Loan.

Section 7.09. *Transactions with Affiliates.* None of the Group Companies will engage in any transaction or series of transactions with (a) any officer, director, holder of any Equity Interest in or other Affiliate of Holdings (b) any Affiliate of any such officer, director or holder or (c) the Sponsor or any officer, director, holder of any Equity Interest in or other Affiliate of the Sponsor, other than:

(i) [reserved]

(ii) transactions expressly permitted by Section 7.01, Section 7.02, Section 7.04, Section 7.05, Section 7.06, Section 7.07 or Section 7.12;

(iii) normal compensation, severance, indemnities and reimbursement of reasonable expenses of officers, employees, consultants and directors, including stock incentive and option plans and agreements relating thereto, and customary premiums in respect of director's and officer's insurance policies;

(iv) entering into the Plan Support Agreement and the Equity Commitment Agreement and the transactions contemplated thereby, including, to the extent approved by the Bankruptcy Court, reimbursement of expenses pursuant to the terms thereof;

(v) any transaction entered into solely among Foreign Subsidiaries;

(vi) any transaction entered into among Holdings, the Borrower and the Guarantors or among the Guarantors or Permitted Joint Ventures;

(vii) [reserved];

(viii) the issuance or sale of any Equity Interest (other than Disqualified Stock) of Holdings, the Borrower and the granting of other customary rights in connection therewith;

(ix) the entering into of a tax sharing agreement, or payments pursuant thereto, between the Borrower and one or more Subsidiaries, on the one hand, and any other Person with which the Borrower and such Subsidiaries are required or permitted to file a consolidated tax return or with which the Borrower and such Subsidiaries are part of a consolidated group for tax purposes, on the other hand;

(x) transactions with franchisees, joint venturers, customers, clients, suppliers, or purchasers or sellers of goods or services (including the Borrower and its Subsidiaries), in each case in the ordinary course of business and otherwise in compliance with the terms hereof;

(xi) transactions with Foreign Subsidiaries and Permitted Joint Ventures in the ordinary course of business involving the sale of items by the Borrower or its Subsidiaries or the provision of services by the Borrower or its Subsidiaries, in each case (other than *de minimis* items) for remuneration at least equal to Borrower's or such Subsidiary's cost of such items sold or services provided; and

(xii) other transactions which are engaged in by the Borrower or any of its Subsidiaries in the ordinary course of its business on terms and conditions as favorable to such Person as would be obtainable by it in a comparable arms'-length transaction with an independent, unrelated third party.

Section 7.10. *Fiscal Year and Accounting Changes; Organizational and Other Documents.* None of the Group Companies will (a) change its fiscal year or make any change in its accounting treatment and reporting policies except as required (or with the consent of the Administrative Agent, which shall not be unreasonably withheld) by GAAP or (b) enter into any amendment, modification or waiver to its articles or certificate of incorporation, bylaws (or analogous organizational documents), in each case as in effect on the Closing Date except for changes that do not materially and adversely affect the rights and privileges of the Senior Credit Parties. The Borrower will cause the Group Companies promptly to provide the Agent with copies of all amendments to the foregoing documents and instruments as in effect as of the Petition Date.

Section 7.11. *Restrictions with Respect to Intercorporate Transfers.* None of the Group Companies will create or otherwise cause or permit to exist any encumbrance or restriction which prohibits or otherwise restricts (a) the ability of any such Group Company to (i) make Restricted Payments or pay any Indebtedness owed to the Borrower or any Subsidiary of the Borrower, (ii) pay Indebtedness or other obligations owed to any Loan Party, (iii) make loans or advances to the Borrower or any Subsidiary of the Borrower, (iv) transfer any of its properties or assets to the Borrower or any Subsidiary Guarantor or (v) act as a Subsidiary Guarantor and pledge its assets pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extensions thereof or (b) the ability of Holdings, the Borrower or any Subsidiary of the Borrower to create, incur, assume or permit to exist any Lien upon its property or assets whether now owned or hereafter acquired to secure the Senior Credit Obligations, except in each case for prohibitions or restrictions existing under or by reason of

(i) this Agreement and the other Loan Documents, the Pre-Petition Senior Notes Documents, the Pre-Petition First Lien Loan Documents or the Pre-Petition Second Lien Loan Documents;

(ii) applicable Law;

(iii) [reserved];

(iv) customary non-assignment provisions with respect to contracts, leases or licensing agreements entered into by the Borrower or any of its Subsidiaries, in each case entered into in the ordinary course of business;

(v) any restriction or encumbrance with respect to any asset of the Borrower or any of its Subsidiaries or a Subsidiary of the Borrower imposed pursuant to an agreement which has been entered into for the sale or disposition of such assets or all or substantially all of the capital stock or assets of such Subsidiary, so long as such sale or disposition is permitted under this Agreement;

(vi) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business in connection with Permitted Joint Ventures;

(vii) Liens permitted under Section 7.02 and any documents or instruments governing the terms of any Indebtedness or other obligations secured by any such Liens; *provided* that such prohibitions or restrictions apply only to the assets subject to such Liens;

(viii) restrictions that are customary with respect to any Indebtedness permitted hereunder that are not materially more restrictive, taken as a whole, than those permitted hereunder;

(ix) any encumbrance or restriction with respect to a Subsidiary pursuant to an agreement relating to any Equity Interests or Indebtedness incurred by such Subsidiary on or prior to the date on which such Subsidiary was acquired by the Borrower (other than Equity Interests or Indebtedness incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary or was acquired by the Borrower) and outstanding on such date;

(x) any restriction on cash or other deposits or net worth provisions in leases and other agreements entered into in the ordinary course of business;

(xi) provisions with respect to dividends, the disposition or distribution of assets or property in joint venture agreements, license agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business; and

(xii) restrictions on deposits imposed under contracts entered into in the ordinary course of business.

Section 7.12. *Ownership of Subsidiaries; Certain Limitations.*

(a) Holdings and the Borrower will not (i) permit any wholly-owned Loan Party to issue Equity Interests to any Person, except (A) to any other wholly-owned Loan Party or (B) Nominal Shares to qualify directors where required by applicable Law or Nominal Shares to satisfy other requirements of applicable Law with respect to the ownership of Equity Interests of Foreign Subsidiaries or (ii) permit any wholly-owned Loan Party to issue any shares of Preferred Stock.

(b) Holdings will not (i) have any material liabilities other than (A) liabilities under the Loan Documents, the Pre-Petition First Lien Loan Documents, the Pre-Petition Second Lien Loan Documents, the Pre-Petition Senior Notes Documents and such other pre-petition obligations as the Bankruptcy Court shall approve and (B) tax and other liabilities in the ordinary course of business or (ii) engage in any business or activity other than (A) entering into the Loan Documents, the Pre-Petition First Lien Loan Documents, the Pre-Petition Second Lien Loan Documents, the Pre-Petition Senior Notes Documents, such other pre-petition obligations as the Bankruptcy Court shall approve and activities incidental or related thereto, (B) owning the Equity Interests of the Borrower and activities incidental or related thereto or to the maintenance of the existence of Holdings or compliance with applicable Law and agreements to which it is a party on the date hereof or agreements to which Holdings is permitted to be a party hereunder, (C) performing its obligations and granting Liens under the agreements referred to in the preceding clause (B) and performing such other pre-petition obligations as the Bankruptcy Court shall approve and (D) issuing its own Equity Interests and Equity Equivalents and repurchasing the same in accordance with the terms hereof or (E) converting from a limited liability company to a corporation as set forth in Section 7.04(f).

(c) Holdings and the Borrower will not permit any Person other than Holdings to hold any Equity Interests or Equity Equivalents of the Borrower.

Section 7.13. *Sale and Leaseback Transactions.* None of the Group Companies will directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease (whether an Operating Lease or a Capital Lease) of any property (whether real, personal or mixed), whether now owned or hereafter acquired (a) which such Group Company has sold or transferred or is to sell or transfer to any other Person which is not a Group Company or (b) which such Group Company intends to use for substantially the same purpose as any other property which has been sold or is to be sold or transferred by such Group Company to another Person which is not a Group Company in connection with such lease.

Section 7.14. *Additional Negative Pledges.* None of the Group Companies (other than Foreign Subsidiaries and non-wholly-owned Subsidiaries) will enter into, assume or become subject to any effective agreement prohibiting or otherwise restricting the creation or assumption of any Lien in favor of the Collateral Agent upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for an obligation if security is given for some other obligation, except (a) pursuant to this Agreement and the other Loan Documents; (b) pursuant to any document or instrument governing Capital Lease Obligations or Purchase Money Indebtedness incurred pursuant to Section 7.01 if any such restriction contained therein relates

only to the asset or assets acquired in connection therewith or assets which are cross-collateralized; (c) pursuant to applicable law; (d) any Indebtedness permitted by Section 7.01(a), (b), (c), (e) and (n); (e) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and other similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses, or similar agreements, as the case may be); (f) any prohibition or limitation that consists of customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under this Agreement; (g) documents, agreements or constituent documents governing Joint Ventures; (h) any agreement in effect at the time a Subsidiary becomes a Subsidiary of Holdings, Borrower or any of its Subsidiaries, (i) [reserved]; (j) agreements relating to Liens incurred under Section 7.02(a), (h), (i), and (t); (k) Liens incurred under Section 7.02(cc) to the extent the assets subject thereto do not constitute Collateral; and (l) agreements permitted under Section 7.13.

Section 7.15. *Chapter 11 Claims*. None of the Group Companies will incur, create, assume, suffer to exist or permit any other Superpriority Claim which is *pari passu* with or senior to the claims of the Administrative Agent and the Lenders against the Borrower and the Subsidiary Guarantors hereunder, except for the Carve-Out.

Section 7.16. *Financial Covenant*. Beginning with the 5th full week completed subsequent to the Closing Date and continuing for each week thereafter, and as measured on a cumulative basis from the Closing Date, the Borrower's net cash flow (excluding financing costs, court approved utility deposits, PACA claim payments, lien claims payments, capital expenditures, and professional fees and expenses) shall not have a negative variance of greater than (a) with respect to testing in the 5th, 6th, and 7th weeks, the greater of (i) 20% of the projected amounts set forth in the Initial Approved Budget for prior periods and (ii) $5,000,000, (b) with respect to testing in the 8th, 9th, 10th, 11th and 12th weeks, the greater of (i) 15% of the projected amounts set forth in the Initial Approved Budget for prior periods and (ii) $5,000,000 and (c) with respect to testing in the 13th week and each week thereafter, the greater of (i) 10% of the projected amounts set forth in the applicable Approved Budget and (ii) $5,000,000.

Section 7.17. *Capital Expenditures.* Consolidated Capital Expenditures shall be no greater than the amount set forth below for any calendar month set forth below:

Calendar Month	**Consolidated Capital Expenditures**
April 2011	$2,150,000
May 2011	$2,100,000
June 2011	$1,800,000
July 2011	$1,000,000
August 2011	$1,200,000
September 2011	$1,400,000
October 2011	$1,200,000

November 2011	$500,000
December 2011	$500,000

; *provided, however*, that (x) if the aggregate amount of Consolidated Capital Expenditures made in any calendar month shall be less than the maximum amount of Consolidated Capital Expenditures permitted under this Section 7.17 for such period (before giving effect to any carryover), then the amount of such shortfall may be added to the amount of Consolidated Capital Expenditures permitted under this Section 7.17 for the immediately succeeding month, and (y) the aggregate amount of Consolidated Capital Expenditures made during the six month period following the Petition Date shall in no event exceed $8,600,000.

ARTICLE 8
DEFAULTS

Section 8.01. *Events of Default.* An Event of Default shall exist upon the occurrence of any of the following specified events or conditions (each an "**Event of Default**"):

(a) *Payment*. Any Loan Party shall:

(i) default in the payment when due (whether by scheduled maturity, acceleration or otherwise) of any principal of any of the Loans; or

(ii) default, and such default shall continue for three or more Business Days, in the payment when due of any interest on the Loans or of any fees or other amounts owing hereunder, under any of the other Loan Documents or in connection herewith.

(b) *Representations*. Any representation or warranty made or deemed to be made by any Loan Party herein or in any of the other Loan Documents or certificates delivered or required to be delivered pursuant hereto or thereto shall prove untrue in any material respect on the date as of which it was made or deemed to have been made.

(c) *Covenants*. Any Loan Party shall:

(i) default in the due performance or observance of any term, covenant or agreement contained in Sections 6.10, 6.11, 6.12 or Article 7; provided, that a default under Section 7.16 shall not constitute an Event of Default unless there shall have been a default under Section 7.16 for three consecutive weeks;

(ii) default in the due performance or observance by it of any term, covenant or agreement contained in Article 6 (other than those referred to in subsection (a) or (c)(i) of this Section 8.01) and such default shall continue unremedied for a period of 30 days (or, in the case of Section 6.01(c), 6.01(d) or 6.01(e), 10 days) after the earlier of a

Responsible Officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent; or

(iii) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsection (a) or (c)(i) or (ii) of this Section 8.01) contained in this Agreement and such default shall continue unremedied for a period of 15 days after the earlier of an executive officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent.

(d) *Other Loan Documents*. (i) Any Loan Party shall default in the due performance or observance of any term, covenant or agreement in any of the other Loan Documents the consequence of which is to adversely affect the ability of the Loan Parties to perform their material obligations under the Loan Documents taken as a whole and such default shall continue unremedied for a period of 15 days after the earlier of an executive officer of a Loan Party becoming aware of such default or notice thereof given by the Administrative Agent, (ii) except pursuant to the terms thereof, any Loan Document shall fail in any material respect to be in full force and effect or any Loan Party shall so assert or (iii) except pursuant to the terms thereof, any Loan Document shall fail in any material respect to give the Administrative Agent, the Collateral Agent and/or the Lenders the security interests, liens, rights, powers and privileges purported to be created thereby.

(e) *Judgments*. One or more judgments, orders, decrees or arbitration awards is entered against any Group Company, in each case as to a post-petition liability or debt, involving in the aggregate a liability (to the extent not covered by independent third-party insurance or an indemnity from a creditworthy third party as to which the insurer or indemnitor, as applicable, does not dispute coverage), as to any single or related series of transactions, incidents or conditions, in excess of the Threshold Amount, and the same shall not have been discharged, vacated or stayed pending appeal within 30 days after the entry thereof.

(f) *ERISA*. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of any Group Company or any ERISA Affiliate in an aggregate amount in excess of the Threshold Amount; (ii) there shall exist an amount of Unfunded Liabilities, individually or in the aggregate, for all Plans and Foreign Pension Plans (excluding for purposes of such computation any Plans and Foreign Pension Plans with respect to which assets exceed benefit liabilities), in an aggregate amount in excess of the Threshold Amount; (iii) any Foreign Pension Plan is not in substantial compliance with all applicable pension benefits and tax laws; (iv) any contribution required to be made in accordance with any applicable law or the terms of any Foreign Pension Plan has not been made; (v) any event has occurred or condition exists with respect to any Foreign Pension Plan that has resulted or could result in any Foreign Pension Plan being ordered or required to be wound up in whole or in part pursuant to any applicable laws or having any applicable registration revoked or refused for the purposes of any applicable pension benefits or tax laws or being placed under the administration of the relevant pension benefits regulatory authority or being required to pay any taxes or penalties under applicable pension benefits and tax laws; (vi) an order has been made or notice has been

given pursuant to any applicable pension benefits and tax laws in respect of any Foreign Pension Plan requiring any person to take or refrain from taking any action in respect thereof or that there has been a contravention of any such applicable laws; (vii) an event has occurred or a condition exists that has resulted or could result in any Group Company being required to pay, repay or refund any amount other than contributions required to be made or expenses required to be paid in the ordinary course) to or on account of any Foreign Pension Plan or a current or former member thereof; or (viii) an event has occurred or a condition exists that has resulted or could result in a payment being made out of a guarantee fund established under the applicable pension benefits laws in respect of a Foreign Pension Plan; and which, with respect to all the events and obligations described in the preceding clauses (iii) through (viii) of this Section 8.01(f), would reasonably be expected to have a Material Adverse Effect.

(g) *Guaranties*. Any Guaranty given by any Loan Party or any provision thereof shall, except pursuant to the terms thereof, cease to be in full force and effect, or any Guarantor thereunder or any Person acting by or on behalf of such Guarantor shall deny or disaffirm such Guarantor's obligations under such Guaranty.

(h) *Ownership*. A Change of Control shall occur.

(i) *Dismissal or Conversion of the Cases; Liquidation; Superpriority Claims*. Any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or the Borrower or any Subsidiary Guarantor shall file a motion or other pleading seeking the dismissal of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within 30 days after the entry thereof; the Borrower's Board of Directors shall authorize a liquidation of the Borrower's business; or an application shall be filed by the Borrower or any Subsidiary Guarantor for the approval of any other Superpriority Claim (other than the Carve-Out) in any of the Cases which is *pari passu* with or senior to the claims of the Administrative Agent and the Lenders against the Borrower or any Subsidiary Guarantor hereunder, or there shall arise or be granted any such pari passu or senior Superpriority Claim.

(j) *Relief from Automatic Stay*. The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code with respect to any material assets or to permit any action that would have a material adverse effect on the Loan Parties or the Collateral.

(k) *Final Order*. An order of the Bankruptcy Court shall be entered reversing, staying for a period in excess of fourteen (14) days, vacating or (without the written consent of the Agents) otherwise amending, supplementing or modifying the Interim Order or the Final Order

in a manner which the Required Lenders reasonably determine is adverse in any material respect to the interests of the Lenders.

(l) *Pre-Petition Payments*. Any Loan Party shall make any Pre-Petition Payment other than Pre-Petition Payments (i) permitted by the Interim Order or the Final Order, (ii) authorized by the Bankruptcy Court pursuant to "first day" orders reasonably satisfactory to the Administrative Agent or (iii) authorized by the Bankruptcy Court pursuant to other court orders in amounts reasonably satisfactory to the Administrative Agent.

(m) *Invalidity of Liens*. Any Lien on a material portion of the Collateral granted under any Collateral Document, the Interim Order or the Final Order, at any time after its execution and delivery or entry and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Senior Credit Obligations, ceases to be in full force and effect; or any Loan Party contests in any manner the validity or enforceability of any Lien granted under any Collateral Document, the Interim Order or the Final Order; or any Loan Party purports to revoke, terminate or rescind any Lien granted under any Loan Document.

(n) *Noncompliance with Orders*. The Borrower or any other Loan Party shall fail to perform or observe any term, covenant, condition or agreement contained in the Interim Order or the Final Order in any material respect.

(o) [Reserved].

(p) *Alternate Reorganization Plan.* A Reorganization Plan shall be confirmed in any of the Cases that does not provide for termination of the unused Commitments and payment in full in cash of the Senior Credit Obligations on the effective date of such plan of reorganization or liquidation or any order shall be entered which dismisses any of the Cases and which order does not provide for termination of the Commitments and payment in full in cash of the Senior Credit Obligations, or any of the Group Companies shall seek, support, or fail to contest in good faith the filing or confirmation of such a plan or the entry of such an order.

(q) [Reserved].

(r) *Acceptable Plan of Reorganization.* Within 60 days after the Petition Date, an Acceptable Plan of Reorganization shall not have been filed with the Bankruptcy Court.

(s) *Disclosure Statement Order*. Within 90 days after the Petition Date, the Bankruptcy Court shall not have entered an order approving the adequacy of the Disclosure Statement or an Acceptable Plan of Reorganization.

(t) *Confirmation Order*. Within 170 days after the Petition Date, the Bankruptcy Court shall not have entered the Confirmation Order.

(u) *Consummation*. Within 180 days after the Petition Date (or, if earlier, within 30 days following the date of entry of the Confirmation Order), the Consummation Date of an Acceptable Plan of Reorganization shall not have occurred.

Section 8.02. *Acceleration; Remedies.* Upon the occurrence of an Event of Default, and in every such event and at any time thereafter during the continuance of such event, and without further order of or application to the Bankruptcy Court, the Administrative Agent (or the Collateral Agent, as applicable) shall, at the request of, or may, with the consent of, the Required Lenders by notice to the Borrower (with a copy to counsel for the Official Creditors' Committee, to the United States Trustee for the Southern District of New York), take one or more of the following actions, at the same or different times (provided, that with respect to the enforcement of Liens or other remedies with respect to the Collateral under clause (d) below, the Administrative Agent shall provide the Borrower (with a copy to counsel for the Official Creditors' Committee and to the United States Trustee for the Southern District of New York) with seven (7) Business Days' written notice prior to taking the action contemplated thereby; in any hearing after the giving of the aforementioned notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing):

(a) *Termination of Commitments*. Declare the Commitments terminated whereupon the Commitments shall be immediately terminated.

(b) *Acceleration of Loans*. Declare the unpaid principal of and any accrued interest in respect of all Loans and any and all other indebtedness or obligations of any and every kind (other than contingent indemnification obligations) owing by a Loan Party to any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties.

(c) [Reserved].

(d) *Enforcement of Rights*. Enforce any and all rights and interests created and existing under the Loan Documents, including, without limitation, all rights and remedies existing under the Loan Documents, all rights and remedies against Holdings or a Subsidiary Guarantor and all rights of setoff.

(e) *Enforcement Rights Vested Solely in Administrative Agent and Collateral Agent*. The Lenders agree that this Agreement may be enforced only by the action of the Administrative Agent, acting upon the instructions of the Required Lenders, and, with respect to the Collateral, the Collateral Agent, and that no other Lender shall have any right individually to seek to enforce any Loan Document or to realize upon the security to be granted hereby.

Section 8.03. *Allocation of Payments After Event of Default.*

(a) *Priority of Distributions*. The Borrower hereby irrevocably waives the right to direct the application of any and all payments in respect of its Senior Credit Obligations and any proceeds of Collateral after the occurrence and during the continuance of an Event of Default and agrees that, notwithstanding the provisions of Sections 2.09(b) and 2.14, after the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable, all amounts collected or received on account of any Senior Credit Obligation shall be applied by the Administrative Agent (or the Collateral Agent, as applicable) in the following order:

FIRST, to pay interest on and then principal of any portion of the Loans that the Administrative Agent may have advanced on behalf of any Lender for which the Administrative Agent has not then been reimbursed by such Lender or the Borrower;

SECOND, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of the Administrative Agent or the Collateral Agent in connection with enforcing the rights of the Lenders under the Loan Documents, including all expenses of sale or other realization of or in respect of the Collateral, including reasonable compensation to the agents and counsel for the Collateral Agent, and all expenses, liabilities and advances incurred or made by the Collateral Agent in connection therewith, and any other obligations owing to the Collateral Agent in respect of sums advanced by the Collateral Agent to preserve the Collateral or to preserve its security interest in the Collateral;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of each of the Lenders in connection with enforcing its rights under the Loan Documents or otherwise with respect to the Senior Credit Obligations owing to such Lender;

FOURTH, to the payment of all of the Senior Credit Obligations consisting of accrued fees and interest;

FIFTH, except as set forth in clauses FIRST through FOURTH above, to the payment of the outstanding Senior Credit Obligations owing to any Lender, pro-rata, in proportion to the respective amounts held by them;

SIXTH, to the payment of the surplus, if any, to whomever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; (ii) each of the Lenders shall receive an amount equal to its pro-rata share of amounts available to be applied pursuant to clauses THIRD, FOURTH and FIFTH above.

ARTICLE 9
AGENCY PROVISIONS

Section 9.01. *Appointment and Authority.* Each of the Lenders hereby irrevocably appoints CFS to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and none of Holdings, the Borrower or any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

Section 9.02. *Rights as a Lender.* The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03. *Exculpatory Provisions.* The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number of percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Administrative Agent shall not be required to take any action that, in its opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.04. *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05. *Delegation of Duties.* The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 9.06. *Resignation of Administrative Agent.* The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower, to appoint a successor, which shall be (i) a Lender or an Affiliate of a Lender and (ii) a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States having combined capital and surplus and undivided profits of not less than $500,000,000. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 9.07. *Non-reliance on Administrative Agent and Other Lenders.* Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08. *No Other Duties, Etc.* Anything herein to the contrary notwithstanding, none of the Agents or the Lead Arranger listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

Section 9.09. *Administrative Agent May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Senior Credit Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Senior Credit Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 9.10. *Collateral and Guaranty Matters.* Each Lender agrees that any action taken by the Collateral Agent or the Required Lenders (or, where required by the express terms of this Agreement, a greater or lesser proportion of the Lenders) in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Collateral Agent or Required Lenders (or, where so required, such greater or lesser proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental

thereto, shall be authorized and binding upon all of the Lenders. Without limiting the generality of the foregoing, the Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon Discharge of Senior Credit Obligations, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent or either Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02; and

(c) to release any Subsidiary Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

Section 9.11. [Reserved].

ARTICLE 10
MISCELLANEOUS

Section 10.01. *Amendments, Etc.*

(a) *Amendments Generally*. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders or such other number or percentage of the Lenders as may be specified herein) and the Borrower and the Administrative Agent shall have received notice and a fully executed written copy thereof, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that the Administrative Agent and the Borrower may, with the consent of the other, amend, modify or supplement this Agreement and any other Loan Document to cure any ambiguity, typographical error, defect or inconsistency if such amendment, modification or supplement does not adversely affect the rights of any Agent or any Lender.

(b) *Amendments and Waivers Pertinent to Affected Lenders.* Notwithstanding paragraph (a) above and in addition to any other consent that may be required thereunder, no amendment, waiver or consent shall:

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

(ii) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest (other than default interest), fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(iii) reduce the principal of, or the rate of interest specified herein on, any Loan or (subject to subsection (c) below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend the definition of "Default Rate";

(iv) change Section 2.13 or Section 8.03 in a manner that would alter the pro-rata sharing of payments required thereby (or, in the case of Section 8.03, the order of application of proceeds provided for therein) without the written consent of each Lender directly affected thereby;

(v) change any provision of this Section or the definition of "Required Lenders," or any other provision hereof specifying the percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vi) release all or substantially all of the value of the Guarantees without the written consent of each Lender (*provided* that the Administrative Agent may, without the consent of any Lender, release any Subsidiary Guarantor (or all or substantially all of the assets of a Subsidiary Guarantor) that is sold or transferred in compliance with Section 7.05);

(vii) release all or substantially all of the Collateral securing the Senior Credit Obligations hereunder without the written consent of each Lender (*provided* that the Collateral Agent may, without consent from any other Lender, release any Collateral that is sold or transferred by a Loan Party in compliance with Section 7.05 or released in compliance with Section 9.10);

(viii) impose any greater restrictions on the ability of the Lenders to assign any of their respective rights or obligations hereunder without the written consent of each Lender; and

(ix) affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document, without the prior written consent of the Administrative Agent.

Notwithstanding anything to the contrary contained in this Section 10.01, this Agreement and the other Loan Documents may be amended with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment is delivered in order to cure any ambiguity or defects.

(c) *Fee Letter Amendment; Defaulting Lenders*. Notwithstanding anything to the contrary herein, (A) the Fee Letter and the Agency Fee Letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto and (B) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

Each Lender and each holder of a Note shall be bound by any waiver, amendment or modification authorized by this Section 10.01 regardless of whether its Note shall have been marked to make reference therein, and any consent by any Lender or holder of a Note pursuant to this Section 10.01 shall bind any Person subsequently acquiring a Note from it, whether or not such Note shall have been so marked.

Section 10.02. *Notices; Effectiveness; Electronic Communication.*

(a) *Notices Generally*. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand, electronic mail or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Borrower, the Administrative Agent or any Co-Documentation Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the

recipient). Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) *Electronic Communications*. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article 2 if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, Holdings or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *The Platform*. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE GROUP COMPANY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE GROUP COMPANY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE GROUP COMPANY MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, "**Agent Parties**") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Group Company Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final an nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to any Loan Party, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) *Change of Address, Etc*. Each of Holdings, the Borrower, its Subsidiaries and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Holdings, the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) *Reliance by Administrative Agent and Lenders*. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices) purportedly given by or on behalf of Holdings, the Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Holdings and the Borrower shall, jointly and severally, indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Holdings or the Borrower. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. *No Waiver; Cumulative Remedies.* No failure by any Lender or by the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Section 10.04. *Expenses; Indemnity; Damage Waiver.*

(a) *Costs and Expenses*. Holdings and the Borrower, jointly and severally, agree to pay on the Closing Date (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of (x) Davis Polk & Wardwell LLP, counsel for the Administrative Agent, and certain special and local counsel and (y) a single financial adviser retained by Davis Polk & Wardwell LLP in connection with their due diligence investigation of the Loan Parties, the syndication of the credit facilities provided for herein and the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof, (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent and any Lender (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (iii) in connection with this Agreement and the other Loan Documents,

including its rights under this Section, or (iv) in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans; *provided, however*, that the Borrower will not be required to pay the fees and expenses of other third party advisors to the Administrative Agent (which shall not include counsel) retained without consent of Borrower (such consent not to be unreasonably withheld or delayed) or more than one counsel (plus local and special counsel).

(b) *Indemnification*. The Borrower and each Subsidiary Guarantor, jointly and severally, shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all (subject to clause (d) below) actual losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of Davis Polk & Wardwell LLP, counsel for the Administrative Agent, of local and special counsel engaged behalf of the Administrative Agent, and of one financial advisor for all Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Holdings, the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Group Company, or any Environmental Liability related in any way to Holdings, the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to the Loan Documents or the transactions contemplated hereby brought by a third party or by Holdings, the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee or a Related Party thereof or (y) result from a claim brought by Holdings, the Borrower or any other Loan Party against an Indemnitee or such Indemnitee's Related Parties for material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction, and *provided further* that Holdings, the Borrower and the other Loan Parties shall not be required to reimburse the legal fees and expenses of more than one firm of outside counsel (in addition to any reasonably necessary special counsel and up to one local counsel in each applicable local jurisdiction) for all Indemnitees unless, in the written opinion of outside counsel reasonably satisfactory to the Borrower and the Administrative Agent, representation of all such Indemnitees would be inappropriate due to the existence of an actual or potential conflict of interest.

(c) *Reimbursement by Lenders*. To the extent that Holdings or the Borrower for any reason fails indefeasibly to pay any amount required under subsection (a) or (b) of this Section to be paid by it or them to the Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.14(d).

(d) *Waiver of Consequential Damages*. To the fullest extent permitted by applicable Law, Holdings and the Borrower agree not to assert, and hereby waive, any claim against any Indemnitee, and each of the Lenders agrees not to assert or permit any of their respective Subsidiaries to assert any claim against Holdings, the Borrower or any of its Subsidiaries or any of their respective directors, officers, employees, attorneys, agents or advisors, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) *Payments*. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) *Survival*. The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all the other Senior Credit Obligations.

Section 10.05. *Payments Set Aside*. To the extent that any payment by or on behalf of Holdings, the Borrower or any other Loan Party is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency or Liquidation Proceeding or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay

to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Senior Credit Obligations and the termination of this Agreement.

Section 10.06. *Successors and Assigns.*

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders*. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it); *provided*, *however*, that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans, owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender that is not an Approved Fund, the aggregate amount of any Loans of an assigning Lender subject to each such assignments, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided*, *however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lenders' rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) any assignment of a Loan or Commitment must be approved by the Administrative Agent, which approval shall not be unreasonably withheld, and which shall not be required if the proposed assignee is itself a Lender, an Affiliate of such Lender or an Approved Fund; and

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; *provided, however,* that (A) no such fee shall be payable for assignments to an Affiliate or Approved Fund of such assigning Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 10.06, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.18 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note or Notes to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 10.06.

Notwithstanding the foregoing, there shall be no assignment of a Commitment or a Loan to a Competitor.

(c) *Register*. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The

Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or other substantive change to the Loan Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from the Administrative Agent a copy of the Register.

(d) *Participations*. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts of each participant's interest in the Loans held by it (the "**Participant Register**"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement notwithstanding any notice to the contrary. Any such Participant Register shall be available for inspection by the Administrative Agent at any reasonable time and from time to time upon reasonable prior notice.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 relating to (a) increases in Commitments of such Participant, (b) reductions of principal, interest (other than a waiver of Default Rate of interest) or fees payable to such Participant, (c) extensions of final maturity or scheduled amortization of the Loans or Commitments in which such Participant participates and (d) releases of all or substantially all of the value of the Guarantees, or all or substantially all of the Collateral. Subject to subsection (e) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits and subject to the requirements of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.06. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) *Limitation upon Participant Rights*. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been

entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent or the right to receive a greater payment results from a Change in Law after the participant becomes a Participant.

(f) *Certain Pledges*. Any Lender may at any time, without the consent of the Borrower or the Administrative Agent, pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) *Electronic Execution of Assignments.* The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act or any other similar state laws based on the Uniform Electronic Transactions Act.

(h) [Reserved].

Section 10.07. *Treatment of Certain Information; Confidentiality.* Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to it and its Affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (in which case the Administrative Agent or such Lender shall use reasonable efforts to notify the Borrower prior to such disclosure, in any case including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any pledgee referred to in Section 10.06(f) or (iii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii)

becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, "**Information**" means all information received from Holdings, the Borrower or any of its Subsidiaries relating to Holdings, the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Holdings, the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding the foregoing, any Agent and any Lender may place advertisements in financial and other newspapers and periodicals or on a home page or similar place for dissemination of information on the Internet or worldwide web as it may choose, and circulate similar promotional materials, after the closing of the transactions contemplated by this Agreement in the form of a "tombstone" or otherwise describing the names of the Loan Parties, or any of them, and the amount, type and closing date of such transactions, all at their sole expense.

Each of the Administrative Agent and the Lenders acknowledges that (i) the Information may include material non-public information concerning Holdings, the Borrower or one or more Subsidiaries, (ii) it has developed compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable Laws, including Federal and state securities Laws.

Section 10.08. *Right of Setoff.* If an Event of Default shall have occurred and be continuing and each Lender is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency but in any event excluding Exempt Deposit Accounts described in clauses (i) and (ii) of the definition thereof) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of Holdings, the Borrower or any other Loan Party against any and all of the obligations of Holdings, the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, to the extent then due and owing, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09. *Interest Rate Limitation.* 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 (the "**Maximum Rate**"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Senior Credit Obligations hereunder.

Section 10.10. *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when (x) it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto and (y) the Interim Order shall have been entered by the Bankruptcy Court.

Section 10.11. *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Credit Extension, and shall continue in full force and effect until the Discharge of Senior Credit Obligations (other than contingent indemnification obligations.

Section 10.12. *Severability.* If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.13. *Replacement of Lenders.* If (a) any Lender requests compensation under Section 3.04, (b) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, (c) the obligation of any Lender to make Eurodollar Loans has been suspended pursuant to Section 3.02, (d) any Lender is a Defaulting Lender or (e) any Lender has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 10.01 or any other provision of any Loan Document requires the consent of all of the Lenders and with respect to which the Required Lenders shall have granted their consent, the Borrower shall have the right, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, (i) to remove such Lender by terminating such Lender's Commitment in full or (ii) to replace such Lender by causing such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that:

(iii) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(iv) such Lender shall have received payment of an amount equal to the outstanding principal amount of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(v) in the case of any assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws; and

(vii) (A) if the Borrower elects to exercise such right with respect to any Lender pursuant to clause (iii), (iv) or (v) above, it shall be obligated to remove or replace, as the case may be, all Lenders that have similar requests then outstanding for compensation pursuant to Section 3.04 or 3.01 or whose obligation to make Eurodollar Loans has been similarly suspended and (B) in the case of any replacement of Lenders under the circumstances described in clause (vi) above, the applicable amendment, waiver, discharge or termination that the Borrower has requested shall become effective upon giving effect to such replacement (and any related Assignment and Assumptions required to be effected in connection therewith in accordance with this Section 10.13).

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 10.14. *Governing Law; Jurisdiction; Etc.*

(a) *Governing Law*. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (OTHER THAN AS EXPRESSLY SET FORTH IN SUCH OTHER LOAN DOCUMENTS) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) AND (TO THE EXTENT APPLICABLE) THE BANKRUPTCY CODE.

(b) *Submission to Jurisdiction*. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) *Waiver of Venue*. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) *Service of Process*. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

Section 10.15. *Waiver of Jury Trial*. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.16. *Patriot Act Notice; Lenders' Compliance Certification.*

(a) *Notice to Borrower*. Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the U.S. Patriot Act it may be required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each such Loan Party in accordance with the U.S. Patriot Act.

(b) *Lenders' Certification*. Each Lender or assignee or participant of a Lender that is not incorporated under the Laws of the United States or a State thereof (and is not excepted from the certification requirement contained in Section 313 of the U.S. Patriot Act and the applicable regulations because it is both (i) an Affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country and (ii) subject to supervision by a banking regulatory authority regulating such affiliated depository institution or foreign bank) shall deliver to the Administrative Agent the certification or, if applicable, recertification, certifying that such Lender is not a "shell" and certifying to other matters as required by Section 313 of the U.S. Patriot Act and the applicable regulations thereunder: (i) within 10 days after the Closing Date or, if later, the date such Lender, assignee or participant of a Lender becomes a Lender, assignee or participant of a Lender hereunder and (ii) at such other times as are required under the U.S. Patriot Act.

Section 10.17. *No Advisory or Fiduciary Responsibility*. In connection with all aspects of each transaction contemplated hereby, the Borrower and Holdings each acknowledge and

agree, and acknowledge their respective Affiliates' understanding, that: (a) the credit facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower, Holdings and their respective Affiliates, on the one hand, and the Administrative Agent and the Lead Arranger, on the other hand, and each of the Borrower and Holdings is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction, each of the Administrative Agent and the Lead Arranger is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower, Holdings or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (c) neither the Administrative Agent nor any Lead Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower or Holdings with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent or any Lead Arranger has advised or is currently advising the Borrower, Holdings or any of their respective Affiliates on other matters) and neither the Administrative Agent nor any Lead Arranger has any obligation to the Borrower, Holdings or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (d) the Administrative Agent and the Lead Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, Holdings and their respective Affiliates, and neither the Administrative Agent nor any Lead Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Administrative Agent and the Lead Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Borrower and Holdings has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Borrower and Holdings hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and any Lead Arranger with respect to any breach or alleged breach of agency or fiduciary duty.

Section 10.18. *Judgment Currency.*

(a) The obligations of the Loan Parties hereunder and under the other Loan Documents to make payments in a specified currency (the "**Obligation Currency**") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by a Lender of the full amount of the Obligation Currency expressed to be payable to it under this Agreement or another Loan Document. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation

Currency (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due in the Obligation Currency, the conversion shall be made, at the rate of exchange (as quoted by the Administrative Agent or if the Administrative Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Administrative Agent) determined, in each case, as of the Business Day immediately preceding the date on which the judgment is given (such Business Day being hereinafter referred to as the "Judgment Currency Conversion Date").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the Borrower covenants and agrees to pay, or cause to be paid, or remit, or cause to be remitted, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining any rate of exchange or currency equivalent for this Section 10.18, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

[Signature Pages Follow]

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

[SIGNATURE BLOCKS TO COME]

EXHIBIT C

INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT dated as of March 26, 2009, between BANK OF AMERICA, N.A. ("**Bank of America**"), in its capacity as collateral agent for the First Lien Obligations (as defined below), including its successors and assigns from time to time, and NATIXIS, NEW YORK BRANCH ("**Natixis**") in its capacity as collateral agent for the Second Lien Obligations (as defined below), including its successors and assigns from time to time. Capitalized terms used herein but not otherwise defined herein have the meanings set forth in Section 1 below.

A. Sbarro, Inc., a Delaware corporation (the "**Company**"), is party to the Credit Agreement dated as of January 31, 2007 (as amended on March 26, 2009 and as further amended, restated, supplemented, waived, Refinanced or otherwise modified from time to time, the "**First Lien Credit Agreement**"), among the Company, Sbarro Holdings, LLC, ("**Holdings**"), each lender from time to time party thereto, Bank of America, as Administrative Agent, Collateral Agent, Swing Line Lender and L/C Issuer, Credit Suisse, as Syndication Agent, Banc of America Securities LLC and Credit Suisse Securities (USA) LLC, as Joint Lead Arrangers and Joint Book Managers, and Natixis and Bank of Ireland, as Co-Documentation Agents.

B. The Company is party to that certain Second Lien Credit Agreement (as amended, restated, supplemented, waived, Refinanced or otherwise modified from time to time, the "**Second Lien Credit Agreement**") dated March 26, 2009 among the Company, Holdings, each lender from time to time party thereto and Natixis, as collateral agent.

Accordingly, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. Definitions.

1.1. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"**Agreement**" shall mean this Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"**Bank of America**" shall have the meaning set forth in the preamble.

"**Bankruptcy Code**" means Title 11 of the United States Code, as amended.

"**Bankruptcy Law**" shall mean the Bankruptcy Code and any similar Federal, state or foreign law for the relief of debtors.

"**Cap Amount**" shall mean $225,000,000.

"**Common Collateral**" shall mean all of the assets of any Grantor, whether real, personal or mixed, constituting both First Lien Collateral and Second Lien Collateral, including without limitation any assets in which the First Lien Collateral Agent is automatically deemed to have a Lien pursuant to the provisions of Section 2.3.

"**Company**" shall have the meaning set forth in the recitals.

"**Comparable Second Lien Security Document**" shall mean, in relation to any Common Collateral subject to any Lien created under any First Lien Document, those Second Lien Security Documents that create a Lien on the same Common Collateral, granted by the same Grantor.

"**DIP Financing**" shall have the meaning set forth in Section 6.1.

"**Discharge of First Lien Obligations**" shall mean, except to the extent otherwise provided in Section 5.7, payment in full in cash (except for contingent indemnities and cost and reimbursement obligations to the extent no claim has been made) of all First Lien Obligations and, with respect to letters of credit or letter of credit guaranties outstanding under the First Lien Documents, delivery of cash collateral or backstop letters of credit in respect thereof in a manner consistent with the First Lien Credit Agreement, in each case after or concurrently with the termination of all commitments to extend credit thereunder, and the termination of all commitments of the First Lien Secured Parties under the First Lien Documents; *provided* that the Discharge of First Lien Obligations shall not be deemed to have occurred if such payments are made with the proceeds of other First Lien Obligations that constitute an exchange or replacement for or a Refinancing of such Obligations or First Lien Obligations. In the event the First Lien Obligations are modified and are paid over time or otherwise modified pursuant to Section 1129 of the Bankruptcy Code, the First Lien Obligations shall be deemed to be discharged when the final payment is made, in cash, in respect of such indebtedness and any obligations pursuant to such new indebtedness shall have been satisfied.

"**First Lien Collateral**" shall mean all of the assets of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted or purported to be granted as security for any First Lien Obligations pursuant to a First Lien Security Document.

"**First Lien Collateral Agent**" shall mean Bank of America, in its capacity as administrative agent and collateral agent for the lenders and other secured parties under the First Lien Credit Agreement and the other First Lien Documents entered into pursuant to the First Lien Credit Agreement, together with its successors and permitted assigns under the First Lien Credit Agreement exercising substantially the same rights and powers; and in each case provided that if such First Lien Collateral Agent is not Bank of America, such First Lien Collateral Agent shall have become a party to this Agreement and the other applicable First Lien Security Documents.

"**First Lien Credit Agreement**" shall have the meaning set forth in the recitals.

"**First Lien Documents**" means the credit, guarantee and security documents governing the First Lien Obligations, including, without limitation, the First Lien Credit Agree-

ment, each Swap Agreement (as defined in the First Lien Credit Agreement) with a Swap Creditor (as defined in the First Lien Credit Agreement), documents governing Cash Management Obligations (as defined in the First Lien Credit Agreement) constituting First Lien Obligations and the First Lien Security Documents.

"**First Lien Obligations**" shall mean all "Finance Obligations" as defined in the Security Agreement (as defined in the First Lien Credit Agreement).

"**First Lien Secured Parties**" means, at any relevant time, the holders of First Lien Obligations at such time, including without limitation the lenders, letter of credit issuers, and agents (including First Lien Collateral Agent) under the First Lien Credit Agreement and each Swap Creditor in respect of a Swap Agreement (each as defined in the First Lien Credit Agreement).

"**First Lien Security Documents**" means the Collateral Documents (as defined in the First Lien Credit Agreement) and any other agreement, document or instrument pursuant to which a Lien is granted or purported to be granted securing First Lien Obligations or under which rights or remedies with respect to such Liens are governed, in each case to the extent relating to Common Collateral.

"**First Priority Liens**" means Liens securing the First Lien Obligations, which Liens are superior and prior in priority to the Liens securing the Second Lien Obligations.

"**Grantors**" shall mean the Company and each other Loan Party (as defined in the First Lien Credit Agreement) that has executed and delivered a First Lien Document or a Second Lien Document.

"**Holdings**" shall have the meaning set forth in the recitals.

"**Indebtedness**" shall mean and include all obligations that constitute "Indebtedness" within the meaning of the Second Lien Credit Agreement or the First Lien Credit Agreement.

"**Insolvency or Liquidation Proceeding**" means:

(1) any case commenced by or against the Company or any other Grantor under any Bankruptcy Law, any other proceeding for the reorganization, recapitalization or adjustment or marshalling of the assets or liabilities of the Company or any other Grantor, any receivership or assignment for the benefit of creditors relating to the Company or any other Grantor or any similar case or proceeding relative to the Company or any other Grantor or its creditors, as such, in each case whether or not voluntary;

(2) any liquidation, dissolution, marshalling of assets or liabilities or other winding up of or relating to the Company or any other Grantor, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency; or

(3) any other proceeding of any type or nature in which substantially all claims of creditors of the Company or any other Grantor are determined and any payment or distribution is or may be made on account of such claims.

"**Lien**" shall have the meaning assigned to such term in the First Lien Credit Agreement.

"**New Agent"** shall have the meaning set forth in Section 5.7.

"**Non-Conforming Plan of Reorganization**" any Plan of Reorganization which either grants the Second Lien Collateral Agent or any Second Lien Secured Party any right or benefit, directly or indirectly, which right or benefit is expressly prohibited at such time by the provisions of this Agreement, or fails to provide for the Discharge of the First Lien Obligations upon the effective date thereof.

"**Payment Discharge**" shall have the meaning set forth in Section 5.1(a).

"**Person**" shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, entity or other party, including any government and any political subdivision, agency or instrumentality thereof.

"Plan of Reorganization" means any plan of reorganization, plan of liquidation, agreement for composition, or other type of plan of arrangement proposed in or in connection with any Insolvency or Liquidation Proceeding.

"**Pledged Collateral**" shall mean the Common Collateral in the possession or control of the First Lien Collateral Agent (or its agents or bailees), to the extent that possession or control thereof perfects a Lien thereon under the UCC.

"**Recovery**" shall have the meaning set forth in Section 6.3.

"**Refinance**" means, in respect of any indebtedness, to refinance, extend, renew, defease, amend, increase, modify, supplement, restructure, refund, replace or repay, or to issue other indebtedness or enter alternative financing arrangements, in exchange or replacement for such indebtedness, including by adding or replacing lenders, creditors, agents, borrowers and/or guarantors, and including in each case, but not limited to, after the original instrument giving rise to such indebtedness has been terminated. "**Refinanced**" and "**Refinancing**" have correlative meanings.

"**Reinstatement"** shall have the meaning set forth in Section 5.7.

"Required Lenders" shall have the meaning assigned to such term in the First Lien Credit Agreement.

"**Second Lien Collateral**" shall mean all of the assets of any Grantor, whether real, personal or mixed, with respect to which a Lien is granted or purported to be granted as security for any Second Lien Obligations pursuant to a Second Lien Security Document.

"**Second Lien Collateral Agent**" shall mean Natixis, in its capacity as administrative agent and collateral agent for the lenders and other secured parties under the Second Lien Credit Agreement and the other Second Lien Documents entered into pursuant to the Second Lien Credit Agreement, together with its successors and permitted assigns under the Second Lien Credit Agreement exercising substantially the same rights and powers; and in each case provided that if such Second Lien Collateral Agent is not Natixis, such Second Lien Collateral Agent shall have become a party to this Agreement and the other applicable Second Lien Security Documents.

"**Second Lien Documents**" means the credit and security documents governing the Second Lien Obligations, including, without limitation, the Second Lien Documents and the Second Lien Security Documents.

"**Second Lien Obligations**" shall mean all ["Finance Obligations"] as defined in the Security Agreement (as defined in the Second Lien Credit Agreement).

"**Second Lien Secured Parties**" means, at any relevant time, the holders of Second Lien Obligations at such time, including, without limitation, the lenders and agents (including the Second Lien Collateral Agent) under the Second Lien Credit Facility.

"**Second Liens**" means the Liens securing the Second Lien Obligations.

"**Second Lien Security Documents**" means the Collateral Documents (as defined in the Second Lien Credit Agreement) and any other agreement, document or instrument pursuant to which a Lien is granted or purported to be granted securing Second Lien Obligations or under which rights or remedies with respect to such Liens are governed.

"**Subsidiary**" shall mean any "Subsidiary" of the Company as defined in the First Lien Credit Agreement or the Second Lien Credit Agreement.

"**UCC**" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York.

1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified in accordance with this Agreement, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections shall be construed to refer to Sections of this Agreement and (e) the words "asset" and "property" shall be construed to

have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 2. Lien Priorities.

2.1. Subordination of Liens. Notwithstanding (i) the date, time, manner or order of filing or recordation of any document or instrument or grant, attachment or perfection (including any defect or deficiency or alleged defect or deficiency in any of the foregoing) of any Liens granted to the Second Lien Collateral Agent or the Second Lien Secured Parties on the Common Collateral or of any Liens granted to the First Lien Collateral Agent or the First Lien Secured Parties on the Common Collateral, (ii) any provision of the UCC, the Bankruptcy Code, any applicable law, the Second Lien Documents or the First Lien Documents, (iii) whether the First Lien Collateral Agent, either directly or through agents, holds possession of, or has control over, all or any part of the Common Collateral, (iv) the fact that any such Liens may be subordinated, voided, avoided, invalidated or lapsed or (v) any other circumstance of any kind or nature whatsoever, the Second Lien Collateral Agent, on behalf of itself and each Second Lien Secured Party, hereby agrees that: (a) any Lien on the Common Collateral securing any First Lien Obligations now or hereafter held by or on behalf of the First Lien Collateral Agent or any First Lien Secured Parties or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall have priority over and be senior in all respects and prior to any Lien on the Common Collateral securing any Second Lien Obligations, and (b) any Lien on the Common Collateral securing any Second Lien Obligations now or hereafter held by or on behalf of the Second Lien Collateral Agent or any Second Lien Secured Party or any agent or trustee therefor regardless of how acquired, whether by grant, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens on the Common Collateral securing any First Lien Obligations. All Liens on the Common Collateral securing any First Lien Obligations shall be and remain senior in all respects and prior to all Liens on the Common Collateral securing any Second Lien Obligations for all purposes, whether or not such Liens securing any First Lien Obligations are subordinated to any Lien securing any other obligation of the Company, any other Grantor or any other Person. The Second Lien Collateral Agent, for itself and on behalf of the Second Lien Secured Parties, expressly agrees that any Lien purported to be granted on any Common Collateral as security for the First Lien Obligations shall be deemed to be, and shall be deemed to remain, senior in all respects and prior to all Liens on the Common Collateral securing any Second Lien Obligations for all purposes regardless of whether the Lien purported to be granted is found to be improperly granted, improperly perfected, preferential, a fraudulent conveyance or legally or otherwise deficient in any manner.

2.2. Prohibition on Contesting Liens. The Second Lien Collateral Agent, for itself and on behalf of each applicable Second Lien Secured Party, agrees that (a) it shall not (and hereby waives any right to) take any action to challenge, contest or support any other Person in contesting or challenging, directly or indirectly, in any proceeding (including any Insolvency or Liquidation Proceeding), the validity, perfection, priority or enforceability of a Lien securing any First Lien Obligations held (or purported to be held) by or on behalf of the First Lien Collateral Agent or any of the First Lien Secured Parties or any agent or trustee therefor in any First Lien Collateral or Common Collateral and (b) none of them will oppose or otherwise contest (or sup-

port any Person contesting) any other request for judicial relief made in any court by the First Lien Collateral Agent or any First Lien Secured Parties relating to the lawful enforcement of any First Priority Lien on Common Collateral or First Lien Collateral.

2.3. No New Liens. So long as the Discharge of First Lien Obligations has not occurred, the parties hereto agree that, after the date hereof, the Second Lien Collateral Agent shall not acquire or hold any Lien on any assets of the Company or any other Grantor (and neither the Company nor any Grantor shall grant such Lien) securing any Second Lien Obligations that are not also subject to a First Priority Lien in respect of the First Lien Obligations under the First Lien Documents. If the Second Lien Collateral Agent shall (nonetheless and in breach hereof) acquire or hold any Lien on any assets of the Company or any other Grantor that is not also subject to the First Priority Lien in respect of the First Lien Obligations under the First Lien Documents, then the Second Lien Collateral Agent shall, without the need for any further consent of any party and notwithstanding anything to the contrary in any other document, be deemed to also hold and have held such Lien for the benefit of the First Lien Collateral Agent as security for the First Lien Obligations (subject to the lien priority and other terms hereof) and shall use its best efforts to promptly notify the First Lien Collateral Agent in writing of such Lien and in any event take such actions as may be requested by the First Lien Collateral Agent to assign or release such Lien to the First Lien Collateral Agent (and/or its designee) as security for the applicable First Lien Obligations.

2.4. Perfection of Liens. Except as expressly set forth in Section 5.5 hereof, neither the First Lien Collateral Agent nor any First Lien Secured Party shall be responsible for perfecting and maintaining the perfection of Liens with respect to the Common Collateral for the benefit of the Second Lien Collateral Agent or any other Second Lien Secured Parties. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the First Lien Secured Parties and the Second Lien Secured Parties and shall not impose on the First Lien Collateral Agent, the Second Lien Collateral Agent, the Second Lien Secured Parties or the First Lien Secured Parties or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any Common Collateral which would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or governmental authority or any applicable law.

SECTION 3. Enforcement.

3.1. Exercise of Remedies.

(a) So long as the Discharge of First Lien Objections has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor, (i) none of the Second Lien Collateral Agent or any Second Lien Secured Party will (x) exercise or seek to exercise any rights or remedies (including setoff and the right to credit bid debt) with respect to any Common Collateral in respect of any applicable Second Lien Obligations, or institute any action or proceeding with respect to such rights or remedies (including any action of foreclosure), (y) contest, protest or otherwise object to any foreclosure or enforcement proceeding or action brought with respect to the Common Collateral or any other collateral by the First Lien Collateral Agent or any First Lien Secured Party in respect of the First Lien Obligations, the exercise of any right by the First Lien Collateral Agent or

any First Lien Secured Party (or any agent or sub-agent on their behalf) in respect of the First Lien Obligations under any control agreement, lockbox agreement, landlord waiver or bailee's letter or similar agreement or arrangement to which the Second Lien Collateral Agent or any Second Lien Secured Party either is a party or may have rights as a third party beneficiary, or any other exercise by any such party, of any rights and remedies as a secured party relating to the Common Collateral or any other collateral under the First Lien Documents or otherwise in respect of First Lien Obligations, or (z) object to any waiver or forbearance by the First Lien Secured Parties from or in respect of bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Common Collateral or any other collateral in respect of First Lien Obligations and (ii) except as otherwise provided herein, the First Lien Collateral Agent and the First Lien Secured Parties shall have the sole and exclusive right to enforce rights, exercise remedies (including setoff and the right to credit bid their debt), marshal, process and make determinations regarding the release, disposition or restrictions, or waiver or forbearance of rights or remedies with respect to the Common Collateral without any consultation with or the consent of the Second Lien Collateral Agent or any Second Lien Secured Party; *provided, however,* that (A) in any Insolvency or Liquidation Proceeding commenced by or against the Company or any other Grantor, the Second Lien Collateral Agent may file a proof of claim or statement of interest with respect to the Second Lien Obligations and (B) the Second Lien Collateral Agent may take any action (not adverse to the prior Liens on the Common Collateral securing the First Lien Obligations, or the rights of the First Lien Collateral Agent or the First Lien Secured Parties to exercise remedies in respect thereof) in order to prove, preserve or protect (but not enforce) its rights in, and perfection and priority of its Lien on, the Common Collateral. In exercising rights and remedies with respect to the First Lien Collateral or Common Collateral, the First Lien Collateral Agent and the First Lien Secured Parties may enforce the provisions of the First Lien Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of Common Collateral or other collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured lender under the Uniform Commercial Code of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(b) So long as the Discharge of First Lien Obligations has not occurred, the Second Lien Collateral Agent, on behalf of itself and each applicable Second Lien Secured Party, agrees that it will not, in the context of its role as secured lender, take or receive any Common Collateral or any proceeds of Common Collateral in connection with the exercise of any right or remedy or otherwise in an Insolvency or Liquidation Proceeding (including set off or the right to credit bid debt (except as set forth in Section 6.10 below)) with respect to any Common Collateral in respect of the applicable Second Lien Obligations. Without limiting the generality of the foregoing, unless and until the Discharge of First Lien Obligations has occurred, except as expressly provided in the proviso in clause (ii) of Section 3.1(a), the sole right of the Second Lien Collateral Agent and the Second Lien Secured Parties with respect to the Common Collateral is to hold a Lien on the Common Collateral in respect of the applicable Second Lien Obligations pursuant to the Second Lien Documents, as applicable, for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of First Lien Obligations has occurred.

(c) Subject to the proviso in clause (ii) of Section 3.1(a), (i) the Second Lien Collateral Agent, for itself and on behalf of each Second Lien Secured Party, agrees that none of the Second Lien Collateral Agent or any Second Lien Secured Party will take any action that would hinder any exercise of remedies undertaken by the First Lien Collateral Agent or the First Lien Secured Parties with respect to the Common Collateral, the First Lien Collateral or any other collateral under the First Lien Documents, including any sale, lease, exchange, transfer or other disposition of the Common Collateral, the First Lien Collateral or such other collateral, whether by foreclosure or otherwise, and (ii) the Second Lien Collateral Agent, for itself and on behalf of each Second Lien Secured Party, hereby waives any and all rights it or any Second Lien Secured Party may have as a junior lien creditor or otherwise to object to the manner in which the First Lien Collateral Agent or the First Lien Secured Parties seek to enforce or collect the First Lien Obligations or the Liens granted in any of the First Lien Collateral or Common Collateral, regardless of whether any action or failure to act by or on behalf of the First Lien Collateral Agent or First Lien Secured Parties is adverse to the interests of the Second Lien Secured Parties.

(d) The Second Lien Collateral Agent and each Second Lien Secured Party hereby acknowledge and agree that no covenant, agreement or restriction contained in any applicable Second Lien Document shall be deemed to restrict in any way the rights and remedies of the First Lien Collateral Agent or the First Lien Secured Parties with respect to the First Lien Collateral or Common Collateral as set forth in this Agreement and the First Lien Documents.

(e) So long as the Discharge of First Lien Obligations has not occurred, the Second Lien Collateral Agent, on behalf of itself and the applicable Second Lien Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Common Collateral or any other similar rights a junior secured creditor may have under applicable law.

3.2. Cooperation. Subject to the proviso in clause (ii) of Section 3.1(a), the Second Lien Collateral Agent, on behalf of itself and each applicable Second Lien Secured Party, agrees that, unless and until the Discharge of First Lien Obligations has occurred, it will not commence, or join with any Person (other than the First Lien Secured Parties and the First Lien Collateral Agent upon the request thereof) in commencing, any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to any Lien held by it in the Common Collateral or any other collateral under any of the applicable Second Lien Documents or otherwise in respect of the applicable Second Lien Obligations.

3.3. Actions Upon Breach. If any Second Lien Secured Party, in contravention of the terms of this Agreement, in any way takes, attempts to or threatens to take any action with respect to the Common Collateral (including, without limitation, any attempt to realize upon or enforce any remedy with respect to this Agreement), this Agreement shall create an irrebuttable presumption and admission by such Second Lien Secured Party that relief against such Second Lien Secured Party by injunction, specific performance and/or other appropriate equitable relief is necessary to prevent irreparable harm to the First Lien Secured Parties, it being understood and

agreed by each Second Lien Collateral Agent on behalf of each applicable Second Lien Secured Party that (i) the First Lien Secured Parties' damages from its actions may at that time be difficult to ascertain and may be irreparable, and (ii) each Second Lien Secured Party waives any defense that the Grantors and/or the First Lien Secured Parties cannot demonstrate damage and/or can be made whole by the awarding of damages.

SECTION 4. Payments.

4.1. Application of Proceeds. So long as the Discharge of First Lien Obligations has not occurred, the Common Collateral or proceeds thereof received in connection with the sale or other disposition of, or collection on, such Common Collateral upon the exercise of remedies as a secured party, shall be applied by the First Lien Collateral Agent to the First Lien Obligations in such order as specified in the relevant First Lien Documents until the Discharge of First Lien Obligations has occurred. Upon the Discharge of First Lien Obligations, subject to the proviso of Section 5.1(a)(y) and subject to Section 5.7 hereof, the First Lien Collateral Agent shall deliver promptly to the Second Lien Collateral Agent any Common Collateral or proceeds thereof held by it in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct.

4.2. Payments Over. Any Common Collateral or First Lien Collateral or proceeds thereof received by the Second Lien Collateral Agent or any Second Lien Secured Party in connection with the exercise of any right or remedy (including set off or credit bid) or in any Insolvency or Liquidation Proceeding relating to the Common Collateral not expressly permitted by this Agreement or prior to the Discharge of First Lien Obligations shall be segregated and held in trust for the benefit of and forthwith paid over to the First Lien Collateral Agent (and/or its designees) for the benefit of the First Lien Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The First Lien Collateral Agent is hereby authorized to make any such endorsements as agent for the Second Lien Collateral Agent or any such Second Lien Secured Party. This authorization is coupled with an interest and is irrevocable.

4.3. AHYDO Payments. Notwithstanding anything herein to the contrary, the Second Lien Secured Parties may accept and retain amounts paid by the Grantors pursuant to Section 2.06(e) of the Second Lien Credit Agreement as in effect on the date hereof.

SECTION 5. Other Agreements.

5.1. Releases.

(a) (x) If, at any time any Grantor or any First Lien Secured Party delivers notice to the Second Lien Collateral Agent with respect to any specified Common Collateral (including for such purpose, in the case of the sale or other disposition of all or substantially all of the equity interests in any Subsidiary, any Common Collateral held by such Subsidiary or any direct or indirect Subsidiary thereof) that:

(A) such specified Common Collateral has been or is being sold, transferred or otherwise disposed of in connection with a Disposition by the owner of such Common Collateral in a transaction permitted under the First Lien Credit Agreement; or

(B) the First Priority Liens thereon have been or are being released in connection with a Subsidiary that is released from its guarantee under the First Lien Credit Agreement; or

(C) the First Priority Liens thereon have been or are being otherwise released as permitted by the First Lien Credit Agreement or by the First Lien Collateral Agent on behalf of the First Lien Secured Parties (unless, in the case of clause (B) or (C) of this Section 5.1(a)(x) such release occurs in connection with, and after giving effect to, a Discharge of First Lien Obligations, which discharge is not in connection with a foreclosure of, or other exercise of remedies with respect to, Common Collateral by the First Lien Secured Parties (such discharge not in connection with any such foreclosure or exercise of remedies or a sale or other disposition generating sufficient proceeds to cause the Discharge of First Lien Obligations, a "**Payment Discharge**")),

then the Second Liens upon such Common Collateral will automatically be released and discharged as and when, but only to the extent, such Liens on such Common Collateral securing First Lien Obligations are released and discharged (*provided* that in the case of a Payment Discharge, the Liens on any Common Collateral disposed of in connection with the satisfaction in whole or in part of First Lien Obligations shall be automatically released but any proceeds thereof not used for purposes of the Discharge of First Lien Obligations or otherwise in accordance with the Second Lien Credit Agreement shall be subject to Second Liens and shall be applied pursuant to Section 4.1). Upon delivery to the Second Lien Collateral Agent of a notice from the First Lien Collateral Agent stating that any such release of Liens securing or supporting the First Lien Obligations has become effective (or shall become effective upon the Second Lien Collateral Agent's release), the Second Lien Collateral Agent will promptly, at the Company's expense, execute and deliver such instruments, releases, termination statements or other documents confirming such release on customary terms, which instruments, releases and termination statements shall be substantially identical to the comparable instruments, releases and termination statements executed by the First Lien Collateral Agent in connection with such release. In the case of the sale of capital stock of a Subsidiary or any other transaction resulting in the release of such Subsidiary's guarantee under the First Lien Credit Agreement in accordance with the First Lien Credit Agreement, the guarantee in favor of the Second Lien Secured Parties, if any, made by such Subsidiary will automatically be released and discharged as and when, but only to the extent, the guarantee by such Subsidiary of First Lien Obligations is released and discharged.

(y) In the event of a Payment Discharge, the Second Liens on Common Collateral owned by the Company or a Grantor immediately after giving effect to such Payment Discharge shall become first-priority security interests (subject to any intercreditor agreements or arrangements among Second Lien Secured Parties pursuant to Section 8.21 and subject to Liens permitted by the Second Lien Credit Agreement); *provided* that if the Company or the Grantors incur at any time thereafter any new or replacement First Lien Obligations

permitted under the Second Lien Credit Agreement, then the provisions of Section 5.7 shall apply as if a Refinancing of First Lien Obligations had occurred.

(b) The Second Lien Collateral Agent, for itself and on behalf of each Second Lien Secured Party, hereby irrevocably constitute and appoint the First Lien Collateral Agent and any officer or agent of the First Lien Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Second Lien Collateral Agent or such holder or in the First Lien Collateral Agent's own name, from time to time in the First Lien Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Section 5.1, including any termination statements, endorsements or other instruments of transfer or release.

(c) Unless and until the Discharge of First Lien Obligations has occurred, the Second Lien Collateral Agent for itself and on behalf of each Second Lien Secured Party, hereby consents to the application, whether prior to or after a default, of proceeds of Common Collateral or other collateral to the repayment of First Lien Obligations pursuant to the First Lien Credit Agreement.

5.2. Insurance. Unless and until the Discharge of First Lien Obligations has occurred, the First Lien Collateral Agent and the First Lien Secured Parties shall have the sole and exclusive right, to the extent permitted by the First Lien Documents and subject to the rights of the Grantors thereunder, to adjust settlement for any insurance policy covering the Common Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding affecting the Common Collateral. Unless and until the Discharge of First Lien Obligations has occurred, all proceeds of any such policy and any such award if in respect of the Common Collateral shall be paid (a) first, until to the occurrence of the Discharge of First Lien Obligations, to the First Lien Collateral Agent for the benefit of First Lien Secured Parties pursuant to the terms of the First Lien Documents, (b) second, after the occurrence of the Discharge of First Lien Obligations, to the Second Lien Collateral Agent for the benefit of the Second Lien Secured Parties pursuant to the terms of the applicable Second Lien Documents and (c) third, if no Second Lien Obligations are outstanding, to the owner of the subject property, such other person as may be entitled thereto or as a court of competent jurisdiction may otherwise direct. If the Second Lien Collateral Agent or any Second Lien Secured Party shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, such proceeds shall be segregated and held in trust for the benefit of the First Lien Collateral Agent and it shall forthwith pay such proceeds over to the First Lien Collateral Agent in accordance with the terms of Section 4.2.

5.3. Amendments to Documents.

(a) So long as the Discharge of First Lien Obligations has not occurred, without the prior written consent of the First Lien Collateral Agent, (i) no Second Lien Security Document may be amended, supplemented or otherwise modified or entered into to the extent any such amendment, supplement or modification would be prohibited or inconsistent with any of the terms of this Agreement and (ii) no other Second Lien Document may be amended, sup-

plemented or otherwise modified or entered into unless such amendment, supplement or modification shall operate only to (A) decrease the rate of interest or delay or defer the date for payment of the interest, principal, premium (if any) or fees payable on the Second Lien Obligations, (B) amend covenants, events of default or remedies relating to Second Lien Obligations in a manner that makes such provisions less restrictive or (C) amend covenants, events of default or remedies relating to Second Lien Obligations in order to reflect a corresponding change in the applicable First Lien Document, provided that any cushion or setback between the First Lien Documents and the Second Lien Documents (expressed as the absolute or percentage difference, whichever is greater) is maintained in connection therewith. The Second Lien Collateral Agent agrees that each applicable Second Lien Security Document shall include the following language (or language to similar effect approved by the First Lien Collateral Agent):

> "Notwithstanding anything herein to the contrary, the liens and security interests granted to [the Second Lien Collateral Agent] pursuant to this Agreement and the exercise of any right or remedy by [the Second Lien Collateral Agent] hereunder are subject to the limitations and provisions of the Intercreditor Agreement, dated as of March 26, 2009 (as amended, restated, supplemented or otherwise modified from time to time, the "**Intercreditor Agreement**") among Bank of America, N.A., as First Lien Collateral Agent, and Natixis, as Second Lien Collateral Agent, and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern and control."

In addition, the Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, agrees that each mortgage, if applicable, covering any Common Collateral shall contain such other language as the First Lien Collateral Agent may reasonably request to reflect the subordination of such mortgage to the First Lien Document covering such Common Collateral.

(b) In the event that the First Lien Collateral Agent or the First Lien Secured Parties enter into any amendment, waiver or consent in respect of or replace any of the First Lien Security Documents for the purpose of adding to, or deleting from, or waiving or consenting to any departures from any provisions of, any First Lien Security Document or changing in any manner the rights of the First Lien Collateral Agent, the First Lien Secured Parties, the Company or any other Grantor thereunder (including the release of any Liens in Common Collateral in accordance with Section 5.1), then such amendment, waiver or consent shall apply automatically to any comparable provision of each Comparable Second Lien Security Document without the consent of the Second Lien Collateral Agent or any Second Lien Secured Party and without any action by the Second Lien Collateral Agent, the Company or any other Grantor; *provided* that such amendment, waiver or consent does not materially adversely affect the rights of the Second Lien Secured Parties or the interests of the Second Lien Secured Parties in the Common Collateral in a manner materially different from that affecting the rights of the First Lien Secured Parties thereunder or therein. The First Lien Collateral Agent shall give written notice of such amendment, waiver or consent (along with a copy thereof) to the Second Lien Collateral Agent; *provided* that the failure to give such notice shall not affect the effectiveness of such amendment with respect to the provisions of any Second Lien Security Document as set forth in this Section 5.3(b).

(c) Without the prior written consent of the Second Lien Collateral Agent, no First Lien Document may be amended, supplemented or otherwise modified or entered into to the extent any such amendment, supplement or modification would result in the aggregate principal amount of First Lien Obligations (including the stated amount of any outstanding letters of credit that constitute First Lien Obligations) to exceed the Cap Amount

5.4. Rights as Unsecured Creditors. Except as otherwise expressly set forth in, or barred by, this Agreement, the Second Lien Collateral Agent and the Second Lien Secured Parties may exercise rights and remedies as an unsecured creditor against the Company or any Grantor that has guaranteed the Second Lien Obligations in accordance with the terms of the applicable Second Lien Documents and applicable law. Nothing in this Agreement shall prohibit the receipt by the Second Lien Collateral Agent or any Second Lien Secured Party of required payments of interest and principal so long as such receipt is not the direct or indirect result of the exercise by the Second Lien Collateral Agent or any Second Lien Secured Party of rights or remedies as a secured creditor in respect of Common Collateral or other collateral or enforcement in contravention of this Agreement of any Lien in respect of Second Lien Obligations held by any of them or in any Insolvency or Liquidation Proceeding. In the event the Second Lien Collateral Agent or any Second Lien Secured Party becomes a judgment lien creditor or other secured creditor in respect of Common Collateral, First Lien Collateral or other collateral as a result of its enforcement of its rights as an unsecured creditor in respect of Second Lien Obligations or otherwise, such judgment or other lien shall be subordinated to the Liens securing First Lien Obligations on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the First Priority Liens securing First Lien Obligations under this Agreement. Nothing in this Agreement impairs or otherwise adversely affects any rights or remedies the First Lien Collateral Agent or the First Lien Secured Parties may have with respect to the First Lien Collateral.

5.5. First Lien Collateral Agent as Gratuitous Bailee for Perfection.

(a) The First Lien Collateral Agent agrees to hold the Pledged Collateral that is part of the Common Collateral in its possession or control (or in the possession or control of its agents or bailees) as gratuitous bailee for the benefit and on behalf of the Second Lien Collateral Agent and each Second Lien Secured Party and any assignee thereof solely for the purpose of perfecting the security interest granted in such Pledged Collateral pursuant to the Second Lien Security Documents, subject to the terms and conditions of this Section 5.5.

(b) In the event that the First Lien Collateral Agent (or its agent or bailees) has Lien filings against intellectual property that is part of the Common Collateral that are necessary for the perfection of Liens in such Common Collateral, the First Lien Collateral Agent agrees to act under such filings and hold such Liens as gratuitous bailee for the Second Lien Collateral Agent and each Second Lien Secured Party and any assignee solely for the purpose of perfecting the Liens granted in such Common Collateral pursuant to the Second Lien Security Documents, subject to the terms and conditions of this Section 5.5.

(c) Except as otherwise specifically provided herein (including Sections 3.1 and 4.1), until the Discharge of First Lien Obligations has occurred, the First Lien Collateral Agent shall be entitled to deal with the Pledged Collateral in accordance with the terms of the

First Lien Documents as if the Liens under the Second Lien Documents did not exist. The rights of the Second Lien Collateral Agent and the Second Lien Secured Parties with respect to such Pledged Collateral shall at all times be subject to the terms of this Agreement.

(d) The First Lien Collateral Agent shall have no obligation whatsoever to any Second Lien Secured Party to assure that the Pledged Collateral is genuine or owned by the Grantors or to protect or preserve rights or benefits of any Person or any rights pertaining to the Common Collateral except as expressly set forth in this Section 5.5. The duties or responsibilities of the First Lien Collateral Agent under this Section 5.5 shall be limited solely to holding the Pledged Collateral as gratuitous bailee for the benefit and on behalf of the Second Lien Collateral Agent and each Second Lien Secured Party for purposes of perfecting the Liens held by the Second Lien Secured Parties.

(e) The First Lien Collateral Agent shall not have by reason of the Second Lien Documents or this Agreement or any other document a fiduciary relationship in respect of any Second Lien Collateral Agent or any Second Lien Secured Party, and each of the Second Lien Collateral Agent and the Second Lien Secured Parties hereby waive and release the First Lien Collateral Agent from all claims and liabilities arising pursuant to the First Lien Collateral Agent's role under this Section 5.5, as agent and gratuitous bailee with respect to the Common Collateral.

(f) Upon the Discharge of First Lien Obligations, the First Lien Collateral Agent shall (x) deliver to the Second Lien Collateral Agent written notice of the occurrence thereof (which notice may state that such Discharge of First Lien Obligations is subject to the provisions of this Agreement, including without limitation Sections 5.1(a)(y), 5.7 and 6.3 hereof) (it being understood that until the delivery of such notice to the Second Lien Collateral Agent, the Second Lien Collateral Agent shall not be charged with knowledge of the Discharge of First Lien Obligations or required to take any actions based on such Discharge of First Lien Obligations) and (y) deliver to the Second Lien Collateral Agent, to the extent that it is legally permitted to do so, the remaining Pledged Collateral (if any) together with any necessary endorsements (or otherwise allow the Second Lien Collateral Agent to obtain control of such Pledged Collateral) or as a court of competent jurisdiction may otherwise direct. The Company and each Grantor shall take such further action as is required to effectuate the transfer contemplated hereby and shall indemnify the First Lien Collateral Agent for loss or damage suffered by the First Lien Collateral Agent as a result of such transfer except for loss or damage suffered by the First Lien Collateral Agent as a result of its own willful misconduct, gross negligence or bad faith. The First Lien Collateral Agent has no obligation to follow instructions from the Second Lien Collateral Agent or any Second Lien Secured Party in contravention of this Agreement.

(g) Neither the First Lien Collateral Agent nor any of the First Lien Secured Parties shall be required to marshal any present or future collateral security for the Company's or any Grantor's obligations to the First Lien Collateral Agent or the First Lien Secured Parties under the First Lien Credit Agreement or the First Lien Documents or any assurance of payment in respect thereof or to resort to such collateral security or other assurances of payment in any particular order, and all of their rights in respect of such collateral security or any assurance of pay-

ment in respect thereof shall be cumulative and in addition to all other rights, however existing or arising.

5.6. [Intentionally Omitted]

5.7. No Release if Event of Reinstatement. If at any time in connection with or after the Discharge of First Lien Obligations the Company either in connection therewith or thereafter enters into any Refinancing of any First Lien Document evidencing a First Lien Obligation, then such Discharge of First Lien Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement, the First Lien Documents and the Second Lien Documents, and the obligations under such Refinancing shall automatically be treated as First Lien Obligations for all purposes of this Agreement (a "**Reinstatement**"), including for purposes of the Lien priorities and rights in respect of Common Collateral set forth herein, and the related documents shall be treated as First Lien Documents for all purposes of this Agreement and the first lien collateral agent under such Refinanced First Lien Documents shall be the First Lien Collateral Agent for all purposes of this Agreement. Upon receipt of a notice stating that the Company has entered into a new First Lien Document (which notice shall include the identity of the new collateral agent, such agent, the "**New Agent**"), the Second Lien Collateral Agent shall promptly (at the expense of the Company) (a) enter into such documents and agreements (including amendments or supplements to this Agreement) as the Company or such New Agent shall reasonably request in order to confirm to the New Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement and (b) deliver to the New Agent the Pledged Collateral together with any necessary endorsements (or otherwise allow the New Agent to obtain possession or control of such Pledged Collateral). The Second Lien Collateral Agent shall not be charged with knowledge of such Reinstatement until it receives written notice from the First Lien Collateral Agent, New Agent or the Company of the occurrence of such Reinstatement.

SECTION 6. Insolvency or Liquidation Proceedings.

6.1. Financing Issues. The Second Lien Collateral Agent and each other Second Lien Secured Party agree that if the Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding:

(a) if the First Lien Collateral Agent shall desire to permit the use of cash collateral or to permit the Company or any other Grantor to obtain financing under Section 363 or Section 364 of the Bankruptcy Code or any similar provision in any Bankruptcy Law ("**DIP Financing**"), including if such DIP Financing is secured by Liens senior in priority to the Liens securing the Second Lien Obligations, then the Second Lien Collateral Agent, on behalf of itself and each applicable Second Lien Secured Party, agrees that it will raise no objection to, and will not support any objection to, and will not otherwise contest such use of cash collateral or DIP Financing and will not request adequate protection or any other relief in connection therewith (except to the extent permitted by Section 6.2) and, to the extent the Liens securing the First Lien Obligations are subordinated or pari passu with such DIP Financing, will subordinate its Liens in the Common Collateral and any other collateral to (i) such DIP Financing (and all Obligations relating thereto); (ii) any adequate protection granted to the First Lien Collateral

Agent or the First Lien Secured Parties in respect of the First Lien Obligations, and (iii) any "carve-out" for professional and United States Trustee fees agreed to by the First Lien Collateral Agent, in each case, on the same basis as the other Liens securing the Second Lien Obligations are so subordinated to the First Priority Liens securing the First Lien Obligations;

(b) none of them will object to, or otherwise contest (or support any other Person contesting), any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement in respect of First Lien Obligations made by the First Lien Collateral Agent or any First Lien Secured Party;

(c) none of them will object to, or otherwise contest (or support any other Person contesting), any order relating to a sale of assets of the Company or any Grantor for which the First Lien Collateral Agent has consented that provides, to the extent that sale is to be free and clear of Liens, that the Liens securing the First Lien Obligations and the Second Lien Obligations will attach to the proceeds of the sale on the same basis of priority as the existing Liens in accordance with this Agreement;

(d) none of them will seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the Common Collateral, the First Lien Collateral or any other collateral without the prior written consent of the First Lien Collateral Agent;

(e) none of them will object to, or otherwise contest (or support any other Person contesting), (i) any request by the First Lien Collateral Agent or any First Lien Secured Party for adequate protection or (ii) any objection by the First Lien Collateral Agent or any First Lien Secured Party to any motion, relief, action or proceeding based on the First Lien Collateral Agent's or such First Lien Secured Party's claiming a lack of adequate protection;

(f) none of them will assert or enforce any claim under Section 506(c) of the Bankruptcy Code senior to or on a parity with the Liens securing the First Lien Obligations for costs or expenses of preserving or disposing of any Common Collateral or First Lien Collateral;

(g) none of them will oppose or otherwise contest (or support any Person contesting) any lawful exercise by the First Lien Collateral Agent or any First Lien Secured Party of the right to credit bid First Lien Obligations at any sale of Common Collateral or First Lien Collateral;

(h) none of them will challenge (or support any other Person challenging) the validity, enforceability, perfection or priority of the First Priority Liens on Common Collateral or First Lien Collateral (and the First Lien Collateral Agent and the First Lien Secured Parties agree not to challenge the validity, enforceability, perfection or priority of the Liens in favor of the Second Lien Collateral Agent and each other Second Lien Secured Party on the Common Collateral);

(i) each of them shall waive their rights to have any administrative claim arising under Section 507(b) of the Bankruptcy Code attach to the proceeds of causes of action arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, and both of them agree that any superpriority administrative claim arising under Section 507(b) of the Bankruptcy Code or otherwise may be satisfied by the issuance of a debt or equity security in connection with any plan of reorganization; and

(j) prior to a Discharge of First Lien Obligations, none of them shall seek to exercise any rights under Section 1111(b) of the Bankruptcy Code.

6.2. Adequate Protection. Each of the Second Lien Collateral Agent and each other Second Lien Secured Party agrees that it will not file or prosecute in any Insolvency or Liquidation Proceeding any motion for adequate protection (or any comparable request for relief) or raise any objection to or otherwise oppose DIP Financing or use of cash collateral supported by the First Lien Collateral Agent based upon their respective security interests in the Common Collateral, except that:

(1) any of them may freely seek and obtain relief granting a junior Lien coextensive in all respects with, but subordinated to, all Liens granted in the Insolvency or Liquidation Proceeding to, or for the benefit of, the First Lien Secured Parties (and the First Lien Collateral Agent and the First Lien Secured Parties will not object to the granting of such a junior Lien); and

(2) any of them may freely seek and obtain any relief upon a motion for adequate protection (or any comparable relief), without any condition or restriction whatsoever, at any time after the Discharge of First Lien Obligations.

6.3. Preference Issues. If any First Lien Secured Party is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Company or any other Grantor (or any trustee, receiver or similar person therefor), because the payment of such amount was declared to be fraudulent or preferential in any respect or for any other reason, any amount (a "**Recovery**"), whether received as proceeds of security, enforcement of any right of setoff or otherwise, then as among the parties hereto, the First Lien Obligations shall be deemed to be reinstated to the extent of such Recovery and to be outstanding as if such payment had not occurred, and such First Lien Secured Party shall be entitled to a reinstatement of First Lien Obligations with respect to all such recovered amounts and shall have all rights hereunder. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto. Any Common Collateral or First Lien Collateral or proceeds thereof received by any Second Lien Secured Party prior to the time of such Recovery shall be deemed to have been received prior to the Discharge of First Lien Obligations and subject to the provisions of Section 4.2. The First Lien Collateral Agent shall use commercially reasonable efforts to give written notice to the Second Lien Collateral Agent of the occurrence of any such Recovery (provided that the failure to give such notice shall not affect the First Lien Collateral Agents rights hereunder, except it being understood that until the delivery of such notice to the Second Lien Collateral Agent, the Second Lien Collateral

Agent shall not be charged with knowledge of such Recovery or required to take any actions based on such Recovery).

6.4. Application. This Agreement shall be applicable prior to and after the commencement of any Insolvency or Liquidation Proceeding. All references herein to any Grantor shall apply to any trustee for such Person and such Person as debtor in possession. The relative rights as to the Common Collateral and other collateral and proceeds thereof shall continue after the filing thereof on the same basis as prior to the date of the petition, subject to any court order approving the financing of, or use of cash collateral by, any Grantor.

6.5. Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed, pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, to the extent the debt obligations distributed on account of the First Lien Obligations and on account of the Second Lien Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations. Without limiting the generality of the foregoing, if, in any Insolvency or Liquidation Proceeding, equity securities are distributed, pursuant to a plan of reorganization or similar dispositive restructuring plan, both on account of First Lien Obligations and on account of Second Lien Obligations, then, the priorities of the equity securities distributed on account of the First Lien Obligations and on account of the Second Lien Obligations must be consistent with the provisions of this Agreement

6.6. Post-Petition Interest.

(a) Neither the Second Lien Collateral Agent nor any Second Lien Secured Party shall oppose or seek to challenge any claim by the First Lien Collateral Agent or any First Lien Secured Party for allowance in any Insolvency or Liquidation Proceeding of First Lien Obligations consisting of post-petition interest, fees or expenses.

(b) Neither the First Lien Collateral Agent nor any other First Lien Secured Party shall oppose or seek to challenge any claim by the Second Lien Collateral Agent or any Second Lien Secured Party for allowance in any Insolvency or Liquidation Proceeding of Second Lien Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Lien in favor of the Second Lien Secured Parties on the Common Collateral (after taking into account the Lien in favor of the First Lien Secured Parties).

6.7. Nature of Obligations; Post-Petition Interest. The Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, hereby acknowledges and agrees that (i) the Second Lien Secured Parties' claims against the Company and/or any Grantor in respect of the Common Collateral constitute junior claims separate and apart (and of a different class) from the senior claims of the First Lien Secured Parties against the Company and/or any such Grantor in respect of the Common Collateral, (ii) the First Lien Obligations include all interest that accrues after the commencement of any Insolvency or Liquidation Proceeding of the Company or any Grantor at the rate provided for in the applicable First Lien Documents governing the same, whether or not a claim for post-petition interest is allowed or allowable in any such

Insolvency or Liquidation Proceeding and (iii) this Agreement constitutes a "subordination agreement" under Section 510 of the Bankruptcy Code. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims against the Company or any Grantor in respect of the Common Collateral constitute only one secured claim (rather than separate classes of senior and junior claims), then the Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, hereby acknowledges and agrees that all distributions pursuant to Section 4.1 or otherwise shall be made as if there were separate classes of senior and junior secured claims against the Company and the Grantors in respect of the Common Collateral (with the effect being that, to the extent that the aggregate value of the Common Collateral is sufficient (for this purpose ignoring all claims held by the Second Lien Collateral Agent on behalf of the Second Lien Secured Parties), the First Lien Secured Parties shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest at the relevant contract rate (even though such claims may or may not be allowed in whole or in part in the respective Insolvency or Liquidation Proceeding) before any distribution is made in respect of the claims held by the Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, with the Second Lien Collateral Agent, on behalf of the Second Lien Secured Parties, hereby acknowledging and agreeing to turn over to the holders of the First Lien Obligations all amounts otherwise received or receivable by them to the extent needed to effectuate the intent of this sentence even if such turnover of amounts has the effect of reducing the amount of the claim of the Second Lien Secured Parties).

6.8. Proofs of Claim. Subject to the limitations set forth in this Agreement, the First Lien Collateral Agent may file proofs of claim and other pleadings and motions with respect to any First Lien Obligations, any Second Lien Obligations or the Common Collateral in any Insolvency or Liquidation Proceeding. If a proper proof of claim has not been filed in the form required in such Insolvency or Liquidation Proceeding at least ten (10) days prior to the expiration of the time for filing thereof, the First Lien Collateral Agent shall have the right (but not the duty) to file an appropriate claim for and on behalf of the Second Lien Secured Parties with respect to any of the Second Lien Obligations or any of the Common Collateral. In furtherance of the foregoing, the Second Lien Collateral Agent hereby appoints the First Lien Collateral Agent as its attorney-in-fact, with full authority in the place and stead of the Second Lien Collateral Agent and full power of substitution and in the name of the Second Lien Secured Parties or otherwise, to execute and deliver any document or instrument that the First Lien Collateral Agent is required or permitted to deliver pursuant to this Section 6.8, such appointment being coupled with an interest and irrevocable.

6.9. Plan of Reorganization. Without limiting the generality of any provisions of this Agreement, any vote to accept, and any other act to support the confirmation or approval of, any Non-Conforming Plan of Reorganization shall be inconsistent with and accordingly, a violation of the terms of this Agreement, and the First Lien Collateral Agent shall be entitled to have any such vote to accept a Non-Conforming Plan of Reorganization dismissed and any such support of any Non-Conforming Plan of Reorganization withdrawn.

6.10. Sales of Assets. If the First Lien Collateral Agent consents, on behalf of the requisite First Lien Secured Parties, to a sale, transfer or other disposition (a "**Disposition**")

of Common Collateral free and clear of its liens pursuant to Section 363(f) of the Bankruptcy Code (with such liens to attach to the proceeds of such sale), neither the Second Lien Collateral Agent nor any Second Lien Secured Party shall raise any objection to or otherwise oppose such sale or other disposition. If requested by the First Lien Collateral Agent, the Second Lien Collateral Agent shall affirmatively consent to such sale or other disposition. Nothing set forth in this Agreement or this Section 6.10 shall be construed to in any way limit or impair the right of any Second Lien Secured Party from exercising a credit bid in accordance with Section 363(k) of the Bankruptcy Code with respect to the Second Lien Obligations in a Disposition of Common Collateral under Section 363 of the Bankruptcy Code, *provided* that in connection with and immediately after giving effect to such sale and credit bid there occurs a Discharge of First Lien Obligations.

6.11. Waiver of Bankruptcy-Related Rights. Prior to a Discharge of First Lien Obligations, the Second Lien Collateral Agent and each other Second Lien Secured Party agree to waive any rights they may have as a secured creditor in an Insolvency or Liquidation Proceeding to seek to have a case or cases commenced by any Grantor or Grantors under Chapter 11 of the Bankruptcy Code converted to a case or cases under Chapter 7 of the Bankruptcy Code pursuant to Section 1112 of the Bankruptcy Code or otherwise; to seek to have a case or cases commenced by any Grantor or Grantors under Chapter 11 of the Bankruptcy Code dismissed pursuant to Section 1112 of the Bankruptcy Code or otherwise; and to seek to have a Chapter 11 trustee or an examiner appointed in any case or cases commenced by any Grantor or Grantors under Chapter 11 of the Bankruptcy Code pursuant to Section 1104 of the Bankruptcy Code or otherwise.

SECTION 7. Reliance; Waivers; etc.

7.1. Reliance. The consent by the First Lien Secured Parties to the execution and delivery of the Second Lien Documents to which the First Lien Secured Parties have consented and all loans and other extensions of credit made or deemed made on and after the date hereof by the First Lien Secured Parties to the Company or any Subsidiary shall be deemed to have been given and made in reliance upon this Agreement. The Second Lien Collateral Agent, on behalf of itself and each Second Lien Secured Party, acknowledges that it and the Second Lien Secured Parties have, independently and without reliance on the First Lien Collateral Agent or any First Lien Secured Parties, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the applicable Second Lien Document, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the applicable Second Lien Document or this Agreement.

7.2. No Warranties or Liability. The Second Lien Collateral Agent, on behalf of itself and each Second Lien Secured Party, acknowledges and agrees that neither the First Lien Collateral Agent nor any of the First Lien Secured Parties has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectibility or enforceability of any of the First Lien Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. The First Lien Secured Parties will be entitled to manage and supervise their respective loans and extensions of credit

under the First Lien Documents in accordance with law and as they, in their sole discretion, may otherwise deem appropriate, and the First Lien Secured Parties may manage their loans and extensions of credit without regard to any rights or interests that the Second Lien Collateral Agent or any of the Second Lien Secured Parties have in the Common Collateral or otherwise, except as otherwise provided in this Agreement. Neither the First Lien Collateral Agent nor any First Lien Secured Parties shall have any duty to the Second Lien Collateral Agent or any Second Lien Secured Party to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Company or any Grantor (including the Second Lien Documents), regardless of any knowledge thereof that they may have or be charged with. Except as expressly set forth in this Agreement, the First Lien Collateral Agent, the First Lien Secured Parties, the Second Lien Collateral Agent and the Second Lien Secured Parties have not otherwise made to each other, nor do they hereby make to each other, any warranties, express or implied, nor do they assume any liability to each other with respect to (a) the enforceability, validity, value or collectibility of any of the Second Lien Obligations, the First Lien Obligations or any guarantee or security which may have been granted to any of them in connection therewith, (b) the Company's or any Grantor's title to or right to transfer any of the Common Collateral or (c) any other matter except as expressly set forth in this Agreement.

7.3. Obligations Unconditional. All rights, interests, agreements and obligations of the First Lien Collateral Agent and the First Lien Secured Parties, and the Second Lien Collateral Agent and the Second Lien Secured Parties, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any First Lien Documents or any Second Lien Documents;

(b) any change in the time, manner or place of payment of, or in any other terms of, all or any of the First Lien Obligations or Second Lien Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of the First Lien Credit Agreement or any other First Lien Document or of the terms of the Second Lien Credit Agreement or any other Second Lien Document;

(c) any exchange of any security interest in any Common Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the First Lien Obligations or Second Lien Obligations or any guarantee thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Company or any other Grantor; or

(e) any other circumstances that otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the First Lien Obligations or the Second Lien Obligations in respect of this Agreement.

SECTION 8. Miscellaneous.

8.1. Conflicts. Subject to Section 8.19, in the event of any conflict between the provisions of this Agreement and the provisions of any First Lien Document or any Second Lien Document, the provisions of this Agreement shall govern.

8.2. Continuing Nature of This Agreement; Severability. Subject to Section 5.1(a)(y), Section 5.7 and Section 6.3, this Agreement shall continue to be effective until the Discharge of First Lien Obligations shall have occurred or such later time as all the obligations in respect of the Second Lien Obligations shall have been paid in full. This is a continuing agreement of lien subordination, and the First Lien Secured Parties may continue, at any time and without notice to the Second Lien Collateral Agent or any Second Lien Secured Party, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any other Grantor constituting First Lien Obligations in reliance hereon. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.3. Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the Second Lien Collateral Agent or the First Lien Collateral Agent shall be deemed to be made unless the same shall be in writing signed by or on behalf of the First Lien Collateral Agent and the Second Lien Collateral Agent or their respective authorized agents, and consented to in writing by the Company, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. The Company and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent their rights are directly and adversely affected (in which case the Company shall have the right to consent to or approve any such amendment, modification or waiver). Notwithstanding anything in this Section 8.3 to the contrary, this Agreement may be amended from time to time at the request of the Company, at the Company's expense, and without the consent of First Lien Collateral Agent, any First Lien Secured Party, the Second Lien Collateral Agent or any Second Lien Secured Party to (i) provide for a replacement First Lien Collateral Agent in accordance with the First Lien Documents (including for the avoidance of doubt to provide for a replacement First Lien Collateral Agent assuming such role in connection with any Refinancing of the First Lien Credit Agreement), provide for a replacement Second Lien Collateral Agent in accordance with the Second Lien Documents (including for the avoidance of doubt to provide for a replacement Second Lien Collateral Agent assuming such role in connection with any Refinancing of the Second Lien Documents permitted hereunder) and/or secure additional extensions of credit or add other parties holding First Lien Obligations or Second Lien Obligations to the extent such Indebtedness does not expressly violate the First Lien Credit Agreement or the Second Lien Credit Agreement and (ii) in the case of such additional Second Lien Obligations, (a) establish that the Liens on the Common Collateral securing such Second Lien Obligations shall be junior and subordinate in all respects to all Liens on the Common Collateral

securing any First Lien Obligations (at least to the same extent as (taken together as a whole) the Liens on the Common Collateral in favor of the Second Lien Obligations are junior and subordinate to the Liens on the Common Collateral in favor of the First Lien Obligations pursuant to this Agreement immediately prior to the incurrence of such additional Second Lien Obligations) and (b) provide to the holders of such Second Lien Obligations (or any agent or trustee thereof) the comparable rights and benefits (including any improved rights and benefits that have been consented to by the First Lien Collateral Agent) as are provided to the Second Lien Secured Parties under this Agreement. Such amendments adding additional agents may be accomplished by delivering to the First Lien Collateral Agent and the Second Lien Collateral Agent an "**Additional Party Addendum**" hereto substantially in the form of Exhibit A hereto. Any such additional party and agent shall be entitled to rely on the determination of officers of the Company that such modifications do not expressly violate the First Lien Credit Agreement, the other First Lien Documents, the Second Lien Credit Agreement, the other Second Lien Documents and this Agreement if such determination is set forth in an officers' certificate delivered to such party, the First Lien Collateral Agent and the Second Lien Collateral Agent in a manner satisfactory to the First Lien Collateral Agent. For the avoidance of doubt, unless otherwise agreed to among the Second Lien Secured Parties (and in addition to any additional requirements with respect to any Second Lien Obligations set forth in the Second Lien Credit Agreement), the Second Lien Collateral Agent shall for all purposes hereof act at the direction of the Second Lien Secured Parties holding a majority of then outstanding Second Lien Obligations.

8.4. Information Concerning Financial Condition of the Company and the Subsidiaries. The First Lien Collateral Agent, the First Lien Secured Parties, the Second Lien Collateral Agent and the Second Lien Secured Parties shall each be responsible for keeping themselves informed of (a) the financial condition of the Company and the Grantors and all endorsers and/or guarantors of the First Lien Obligations or the Second Lien Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations. The First Lien Collateral Agent, the First Lien Secured Parties, the Second Lien Collateral Agent and the Second Lien Secured Parties shall have no duty to advise any other party hereunder of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that the First Lien Collateral Agent, any First Lien Secured Party, the Second Lien Collateral Agent or any Second Lien Secured Party, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other party, it or they shall be under no obligation (w) to make, and the First Lien Collateral Agent, the First Lien Secured Parties, the Second Lien Collateral Agent and the Second Lien Secured Parties shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information that, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

8.5. Subrogation. The Second Lien Collateral Agent, on behalf of itself and each Second Lien Secured Party, hereby waives any rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of First Lien Obligations has occurred.

8.6. Application of Payments. Except as otherwise provided herein, all payments received by the First Lien Secured Parties may be applied, reversed and reapplied, in whole or in part, to such part of the First Lien Obligations by the First Lien Secured Parties in a manner consistent with the terms of the First Lien Documents. Except as otherwise provided herein, the Second Lien Collateral Agent, on behalf of itself and each applicable Second Lien Secured Party, assents to any such extension or postponement of the time of payment of the First Lien Obligations or any part thereof and to any other indulgence with respect thereto, to any substitution, exchange or release of any security that may at any time secure any part of the First Lien Obligations and to the addition or release of any other Person primarily or secondarily liable therefor.

8.7. Consent to Jurisdiction; Waivers. The parties hereto consent to the jurisdiction of any state or federal court located in New York, New York, and consent that all service of process may be made by registered mail directed to such party as provided in Section 8.8 for such party. Service so made shall be deemed to be completed three days after the same shall be posted as aforesaid. The parties hereto waive any objection to any action instituted hereunder in any such court based on forum non conveniens, and any objection to the venue of any action instituted hereunder in any such court. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO IN CONNECTION WITH THE SUBJECT MATTER HEREOF.

8.8. Notices. All notices to the First Lien Secured Parties and the Second Lien Secured Parties permitted or required under this Agreement may be sent to the First Lien Collateral Agent or the Second Lien Collateral Agent, respectively, as provided in the First Lien Credit Agreement, the Second Lien Credit Agreement, the other relevant First Lien Document or the other relevant Second Lien Document, as applicable. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or electronic mail or upon receipt via U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be asset forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.9. Further Assurances. The Second Lien Collateral Agent, on behalf of itself and each Second Lien Secured Party, and the First Lien Collateral Agent, on behalf of itself and each First Lien Secured Party, agree that each of them shall take such further action and shall execute and deliver to the First Lien Collateral Agent and the First Lien Secured Parties such additional documents and instruments (in recordable form, if requested) as the First Lien Collateral Agent or the First Lien Secured Parties may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

8.10. Governing Law. This Agreement has been delivered and accepted at and shall be deemed to have been made at New York, New York and shall be interpreted, and the rights and liabilities of the parties bound hereby determined, in accordance with the laws of the State of New York.

8.11. Binding on Successors and Assigns. This Agreement shall be binding upon the First Lien Collateral Agent, the First Lien Secured Parties, the Second Lien Collateral Agent, the Second Lien Secured Parties and their respective permitted successors and assigns.

8.12. Specific Performance. The First Lien Collateral Agent may demand specific performance of this Agreement. The Second Lien Collateral Agent, on behalf of itself and each Second Lien Secured Party, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action that may be brought by the First Lien Collateral Agent.

8.13. Section Titles. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of this Agreement.

8.14. Counterparts. This Agreement may be executed in one or more counterparts, including by means of facsimile or "pdf" file thereof, each of which shall be an original and all of which shall together constitute one and the same document.

8.15. Authorization. By its signature, each party hereto represents and warrants to the other parties hereto that the Person executing this Agreement on behalf of such party is duly authorized to execute this Agreement. The First Lien Collateral Agent represents and warrants that this Agreement is binding upon the First Lien Secured Parties. The Second Lien Collateral Agent represents and warrants that this Agreement is binding upon the Second Lien Secured Parties.

8.16. No Third Party Beneficiaries; Successors and Assigns. This Agreement and the rights and benefits hereof shall inure to the benefit of, and be binding upon, each of the parties hereto and their respective successors and assigns and shall inure to the benefit of each of, and be binding upon, the holders of First Lien Obligations and Second Lien Obligations. No other Person shall have or be entitled to assert rights or benefits hereunder. Notwithstanding the foregoing, the Company is an intended beneficiary and third party beneficiary hereof with the right and power to enforce with respect to Section 8.3 hereof.

8.17. Effectiveness. This Agreement shall become effective when executed and delivered by the parties hereto. This Agreement shall be effective both before and after the commencement of any Insolvency or Liquidation Proceeding. All references to the Company or any other Grantor shall include the Company or any other Grantor as debtor and debtor-in-possession and any receiver or trustee for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding.

8.18. First Lien Collateral Agent and Second Lien Collateral Agent. It is understood and agreed that (a) Bank of America is entering into this Agreement in its capacity as col-

lateral agent under the First Lien Credit Agreement, and the provisions of Article IX of the First Lien Credit Agreement applicable to the administrative agent and collateral agent thereunder shall also apply to the First Lien Collateral Agent hereunder and (b) Natixis is entering in this Agreement in its capacity as Second Lien Collateral Agent, and the provisions of Article IX of the Second Lien Credit Agreement applicable to the collateral agent thereunder shall also apply to the Second Lien Collateral Agent hereunder.

8.19. Relative Rights. Notwithstanding anything in this Agreement to the contrary (except to the extent contemplated by Section 5.3(b)), nothing in this Agreement is intended to or will (a) amend, waive or otherwise modify the provisions of the First Lien Credit Agreement or any other First Lien Document, or the Second Lien Credit Agreement or any other Second Lien Document, or permit the Company or any Grantor to take any action, or fail to take any action, to the extent such action or failure would otherwise constitute a breach of, or default under, the First Lien Credit Agreement or any other First Lien Documents or the Second Lien Credit Agreement or any other Second Lien Documents, (b) change the relative priorities of the First Lien Obligations or the Liens granted under the First Lien Documents on the Common Collateral (or any other assets) as among the First Lien Secured Parties, (c) otherwise change the relative rights of the First Lien Secured Parties in respect of the Common Collateral as among such First Lien Secured Parties or (d) obligate the Company or any Subsidiary to take any action, or fail to take any action, if taking or failing to take such action, as the case may be, would otherwise constitute a breach of, or default under, the First Lien Credit Agreement or any other First Lien Document or the Second Lien Credit Agreement or any other Second Lien Document. Except as expressly set forth herein, none of the Company, any Grantor or any Subsidiary of the Company or any other creditor thereof shall have any rights hereunder. Nothing in this Agreement is intended to or shall impair the obligations of the Company or any other Grantor to pay the First Lien Obligations and the Second Lien Obligations as and when the same shall become due and payable in accordance with their terms.

8.20. References. Notwithstanding anything to the contrary in this Agreement, any references contained herein to any Section, clause, paragraph, definition or other provision of any First Lien Document or Second Lien Document (including any definition contained therein) shall be deemed to be a reference to such Section, clause, paragraph, definition or other provision as in effect on the date of this Agreement; *provided* that any reference to any such Section, clause, paragraph or other provision shall refer to such Section, clause, paragraph or other provision of the applicable First Lien Document or Second Lien Document, as applicable (including any definition contained therein), as amended or modified from time to time if such amendment or modification has been made in accordance with this Agreement and the applicable First Lien Document or Second Lien Document.

8.21. Intercreditor Agreements. Notwithstanding anything to the contrary contained in this Agreement, each party hereto agrees that the First Lien Secured Parties (as among themselves) may enter into intercreditor agreements (or similar arrangements) governing the rights, benefits and privileges as among the First Lien Secured Parties in respect of the Common Collateral, this Agreement and the other First Lien Documents, including as to application of proceeds of the Common Collateral, voting rights, control of the Common Collateral and waivers with respect to the Common Collateral, in each case so long as the terms thereof do not violate or

conflict with the provisions of this Agreement or the First Lien Documents. Upon obtaining the consent of the Required Lenders, which consent shall not be unreasonably withheld, the Second Lien Secured Parties (as among themselves) may enter into intercreditor agreements (or similar arrangements) governing the rights, benefits and privileges as among the Second Lien Secured Parties in respect of the Common Collateral, this Agreement and the other Second Lien Documents, including as to application of proceeds of the Common Collateral, voting rights, control of the Common Collateral and waivers with respect to the Common Collateral, in each case so long as the terms thereof do not violate or conflict with the provisions of this Agreement or the Second Lien Documents. In any event, if a respective intercreditor agreement (or similar arrangement) exists, the provisions thereof shall not be (or be construed to be) an amendment, modification or other change to this Agreement or any other First Lien Security Document or Second Lien Security Document, and the provisions of this Agreement and the other First Lien Security Documents and Second Lien Security Documents shall remain in full force and effect in accordance with the terms hereof and thereof (as such provisions may be amended, modified or otherwise supplemented from time to time in accordance with the terms hereof and thereof, including to give effect to any intercreditor agreement (or similar arrangement)). The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the First Lien Secured Parties on the one hand and the Second Lien Secured Parties on the other hand.

8.22. Acknowledgement. The Second Lien Collateral Agent hereby acknowledges for itself and on behalf of each Second Lien Secured Party that there are assets of the Company, the other Grantors and their Subsidiaries which are subject to Liens in favor of the First Lien Secured Parties or other creditors but which do not constitute Common Collateral, and nothing in this Agreement shall grant or imply the grant of any Lien or other security interest in such assets in favor of any Second Lien Secured Party to secure any Second Lien Obligations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BANK OF AMERICA, N.A.,
as First Lien Collateral Agent

By: _____

Name: CHRISTOPHER K. WALL

Title: PRINCIPAL

NATIXIS, NEW YORK BRANCH
as Second Lien Collateral Agent

By: _____
Name: SAMANTHA X. TANG / STACEY CARUTH
Title: Associate Director / ASSOCIATE DIRECTOR

CONSENT OF COMPANY AND GRANTORS

Dated: March 26, 2009

Reference is made to the Intercreditor Agreement dated as of the date hereof between Bank of America, N.A., as First Lien Collateral Agent, and Natixis, as Second Lien Collateral Agent, as the same may be amended, restated, supplemented, waived, or otherwise modified from time to time (the "**Intercreditor Agreement**"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

Each of the undersigned Grantors has read the foregoing Intercreditor Agreement and consents thereto. Each of the undersigned Grantors agrees not to take any action that would be contrary to the express provisions of the foregoing Intercreditor Agreement, agrees to abide by the requirements expressly applicable to it under the foregoing Intercreditor Agreement and agrees that, except as otherwise provided therein, no First Lien Secured Party or Second Lien Secured Party shall have any liability to any Grantor for acting in accordance with the provisions of the foregoing Intercreditor Agreement, the First Lien Documents or the Second Lien Documents. Each Grantor understands that the foregoing Intercreditor Agreement is for the sole benefit of the First Lien Secured Parties and the Second Lien Secured Parties and their respective successors and assigns, and that such Grantor is not an intended beneficiary or third party beneficiary thereof except to the extent otherwise expressly provided therein.

Without limitation to the foregoing, each Grantor agrees to take such further action and to execute and deliver such additional documents and instruments (in recordable form, if requested) as the First Lien Collateral Agent or the Second Lien Collateral Agent (or any of their respective agents or representatives) may reasonably request to effectuate the terms of and the lien priorities contemplated by the Intercreditor Agreement.

This Consent shall be governed and construed in accordance with the laws of the State of New York. Notices delivered to any Grantor pursuant to this Consent shall be delivered in accordance with the notice provisions set forth in the First Lien Credit Agreement.

IN WITNESS HEREOF, this Consent is hereby executed by each of the Grantors as of the date first written above.

SBARRO, INC.

By: _____
Name: Dan Montgomery
Title: Chief Financial Officer

SBARRO HOLDINGS, LLC,
as Holdings

By: MidOcean SBR Holdings, LLC, its Sole Member

By: _____
Name: Dan Montgomery
Title: Chief Financial Officer

COREST MANAGEMENT, INC.
DEMEFAC LEASING CORP.
LARKFIELD EQUIPMENT CORP.
MELVILLE ADVERTISING AGENCY, INC.
SBARRO AMERICA, INC.
SBARRO AMERICA PROPERTIES, INC.
SBARRO COMMACK, INC.
SBARRO NEW HYDE PARK, INC.
SBARRO OF LAS VEGAS, INC.
SBARRO OF VIRGINIA, INC.
SBARRO PENNSYLVANIA, INC.
SBARRO PROPERTIES, INC.
SBARRO VENTURE, INC.
SBARRO OF TEXAS, INC.

By: _____
Name: Dan Montgomery
Title: Chief Financial Officer

SBARRO EXPRESS LLC
CARMELA'S, LLC
UMBERTO AT THE SOURCE, LLC
UMBERTO WHITE PLAINS, LLC

By: Sbarro, Inc., Sole Member of each company listed above

By: _____
Name: Dan Montgomery
Title: Chief Financial Officer

SBARRO BLUE BELL EXPRESS, LLC

By: Sbarro Express LLC, its Sole Member

By: Sbarro, Inc., its Sole Member

By: _____

Name: Dan Montgomery
Title: Chief Financial Officer

UMBERTO HUNTINGTON, LLC
UMBERTO DEER PARK, LLC
UMBERTO HAUPPAUGE, LLC
UMBERTO HICKSVILLE, LLC
UMBERTO SYOSSET, LLC
MAMA SBARRO'S OF EAST MEADOW, LLC

By: Sbarro New Hyde Park, Inc., Sole Member of each company listed above

By: _____

Name: Dan Montgomery
Title: Chief Financial Officer

SBARRO OF LONGWOOD, LLC
CARMELA'S OF KIRKMAN, LLC

By: Carmela's, LLC, Sole Member of each company listed above

By: Sbarro, Inc., its Sole Member

By: _____

Name: Dan Montgomery
Title: Chief Financial Officer

Exhibit A

ADDITIONAL PARTY ADDENDUM

Reference is made to the Intercreditor Agreement dated as of March 26, 2009 hereof between Bank of America, N.A., as First Lien Collateral Agent, and Natixis, as Second Lien Collateral Agent, as the same may be amended, restated, supplemented, waived, or otherwise modified from time to time (the "**Intercreditor Agreement**"). Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Intercreditor Agreement.

The undersigned, by execution of this Additional Party Addendum on [ ], hereby acknowledges and agrees to be bound as a [replacement First Lien Collateral Agent] [replacement Second Lien Collateral Agent] by the foregoing provisions of the Intercreditor Agreement as if it were an original party thereto. The undersigned represents and warranties that it has received a copy of each of the First Lien Documents and Second Lien Documents and satisfies each and all of the criteria set forth therein for the assumption of this agency. This Additional Party Addendum shall become effective upon delivery of the officers' certificate contemplated by Section 8.3 of the Intercreditor Agreement [and upon satisfaction of the foregoing conditions: [ ]].

This Additional Party Addendum shall be governed and construed in accordance with the laws of the State of New York. Notices delivered to the undersigned pursuant to this Additional Party Addendum shall be delivered in accordance with the notice provisions set forth in the First Lien Credit Agreement but to the address set forth below or such other address provided in writing, to the Company and other party to the Intercreditor Agreement.

By: _____
Name:
Title:

Date:

Address:

EXHIBIT D

SUCCESSOR AGREEMENT

Execution Copy

SUCCESSOR FIRST LIEN AGENT AGREEMENT

This SUCCESSOR FIRST LIEN AGENT AGREEMENT is dated as of April 1, 2011 (this "Agreement") by and among SBARRO, INC. (the "Borrower"), SBARRO HOLDINGS, LLC ("Holdings"), CANTOR FITZGERALD SECURITIES ("CFS"), in its capacity as successor Administrative Agent (in such capacity, the "Successor Administrative Agent") and successor Collateral Agent (in such capacity, the "Successor Collateral Agent" and, in such capacity, as Successor Administrative Agent or together in such capacities as the context requires, the "Successor Agent"), BANK OF AMERICA, N.A. ("Bank of America"), in its capacity as existing Administrative Agent (in such capacity, the "Existing Administrative Agent") and existing Collateral Agent (in such capacity, the "Existing Collateral Agent" and, in such capacity, as Existing Administrative Agent or together in such capacities as the context requires, the "Existing Agent"), certain Subsidiary Guarantors party hereto and certain Lenders party hereto.

WHEREAS, the Borrower, Holdings, the Lenders party thereto, the Existing Agent and certain other parties thereto entered into that certain Credit Agreement, dated as of January 31, 2007 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used herein without definition shall have the meanings attributed to such terms in the Credit Agreement;

WHEREAS, the Existing Agent has (i) resigned as Administrative Agent under the Credit Agreement and the other Loan Documents and (ii) wishes to resign as Collateral Agent under the Credit Agreement and the other Loan Documents (the "Collateral Agent Resignation");

WHEREAS, the Required Lenders wish to appoint the Successor Agent as successor Administrative Agent and, upon the effectiveness of the Collateral Agent Resignation, as Collateral Agent, the Borrower wishes to ratify such appointments, and the Successor Agent wishes to accept such appointments; and

WHEREAS, in connection with the foregoing, the parties wish to make certain amendments to the Credit Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Resignation, Appointment and Acceptance of Appointment as Successor Administrative Agent.

(a) Effective as of the Administrative Agency Effective Date (as defined below), (i) each Lender party hereto (together constituting the Required Lenders) hereby accepts the resignation of the Existing Administrative Agent as Administrative Agent under the Credit Agreement and the other Loan Documents, (ii) each Lender party hereto (together constituting the Required Lenders) appoints CFS to act as Successor Administrative Agent under the Credit Agreement and the other Loan Documents, (iii) the Borrower consents to the appointment of the Successor Administrative Agent and (iv) CFS hereby accepts its appointment as Successor Administrative Agent. Pursuant to Section 9.06 of the Credit Agreement, the resignation by the Existing Administrative Agent as Administrative Agent shall also constitute its resignation as an L/C Issuer and as the Swing Line Lender under the Credit Agreement.

(b) Effective as of the Collateral Agency Effective Date (as defined below), (i) the Existing Collateral Agent hereby resigns as Collateral Agent as provided under Section 9.06 of the Credit Agreement and Section 6.01 of the Security Agreement, (ii) each Lender party hereto (together constituting the Required Lenders) hereby accepts the resignation of the Existing Collateral Agent as Collateral Agent under the Credit Agreement and the other Loan Documents, (iii) each Lender party hereto (together constituting the Required Lenders) appoints CFS to act as Successor Collateral Agent under the Credit Agreement and the other Loan Documents, (iv) the Borrower consents to the appointment of the Successor Collateral Agent and (v) CFS hereby accepts its appointment as Successor Collateral Agent.

The Existing Agent, the Required Lenders and the Loan Parties each waive any inconsistency, requirement or other conflict with the provisions in Section 9.06 of the Credit Agreement and/or Section 6.01 of the Security Agreement with respect to the resignation under this Agreement of Bank of America as Administrative Agent, Collateral Agent, L/C Issuer and Swing Line Lender and the appointment under this Agreement of CFS as successor Administrative Agent and Collateral Agent, and agree that such resignation and appointment and the acceptance thereof are effective under the Loan Documents and binding on each of the parties hereto. Each of the parties hereto agrees to execute all documents and take such further action as may be necessary to evidence the resignation and appointment described herein. With respect to the resignation by the Existing Agent as an L/C Issuer, it is understood and agreed that (i) as a resigning L/C Issuer, Bank of America shall remain a party to the Credit Agreement and shall continue to have all the rights and obligations of an L/C Issuer under the Credit Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to its resignation (the "Existing Letters of Credit"), but shall not be required to issue additional Letters of Credit, and (ii) upon the acceptance of any appointment of an L/C Issuer under the Credit Agreement by a successor L/C Issuer, Bank of America as the retiring L/C Issuer shall be discharged from all of its duties and obligations in such capacity under the Credit Agreement and the other Loan Documents and such successor L/C Issuer shall issue letters of credit in substitution for the Existing Letters of Credit outstanding at the time of such succession or make other arrangements satisfactory to Bank of America as a retiring L/C Issuer to effectively assume the obligations of Bank of America as issuer of such Existing Letters of Credit.

2. Rights, Duties and Obligations.

(a) Effective as of the Administrative Agency Effective Date, the Successor Administrative Agent shall succeed to and become vested with all the rights, powers, discretion, privileges and duties of the Existing Administrative Agent as described in the Credit Agreement and the other Loan Documents, and shall be bound by the terms thereof, and the Existing Administrative Agent shall be discharged from its duties and obligations under the Loan Documents.

(b) Effective as of the Collateral Agency Effective Date, the Successor Collateral Agent shall succeed to and become vested with all the rights, powers, discretion, privileges and duties of the Existing Collateral Agent as described in the Credit Agreement and the other Loan Documents, and shall be bound by the terms thereof, and the Existing Collateral Agent shall be discharged from its duties and obligations under the Loan Documents. Effective as of the Collateral Agency Effective Date, the Existing Agent hereby assigns to the Successor Agent, each of the Liens and security interests granted to the Existing Agent under the Loan Documents and the Successor Agent hereby assumes all such Liens, for its benefit and for the ratable benefit of all other secured parties under the Loan Documents. Each of the Existing Agent and the Loan Parties authorizes the Successor Agent to file any Uniform Commercial Code assignments or

amendments with respect to the Uniform Commercial Code financing statements, mortgages, and other filings in respect of the Collateral as the Successor Agent deems reasonably necessary or desirable. Notwithstanding anything to the contrary contained in this Agreement, until such time as all Collateral held by the Existing Agent (including, without limitation, any Collateral in the possession or control (as defined in the UCC) of the Existing Agent or any agents or bailee thereof) has been assigned or otherwise transferred to the Successor Agent and any and all consents which may be required in connection with the transfer contemplated by this Agreement, the Existing Agent shall continue to hold such Collateral and will continue to possess all such Collateral, including all proceeds thereof, as bailee for, and for the benefit and on behalf of, the Successor Agent and any assigns for the purpose of perfecting the security interest granted under the Loan Documents until such transfer is completed.

Nothing in this Agreement shall be deemed a termination of the provisions of any Loan Document that survive the Existing Agent's replacement pertaining to Bank of America in its capacity as Agent under the Credit Agreement and the other Loan Documents. The parties hereby agree that the provisions of Article IX and Section 10.04(b) of the Credit Agreement and Section 6.01 of the Security Agreement shall inure to the benefit of the Existing Agent as to any actions taken or omitted to be taken by it while acting as Administrative Agent or Collateral Agent under the Credit Agreement and the other Loan Documents. The Borrower and the Required Lenders expressly agree and acknowledge that the Successor Agent shall bear no responsibility for any actions taken or omitted to be taken by the Existing Agent while the Existing Agent served as Administrative Agent or Collateral Agent under the Loan Documents. The Borrower and the Required Lenders expressly agree and acknowledge that the Successor Agent is not assuming any liability (i) under or related to the Loan Documents (x) in its capacity as Successor Administrative Agent, prior to the Administrative Agency Effective Date or (y) in its capacity as Successor Collateral Agent, prior to the Collateral Agency Effective Date and (ii) for any and all claims under or related to the Loan Documents that may have arisen or accrued (x) in its capacity as Successor Administrative Agent, prior to the Administrative Agency Effective Date and (y) in its capacity as Successor Collateral Agent, prior to the Collateral Agency Effective Date. The Existing Agent expressly agrees and acknowledges that the Successor Agent is not assuming any liability of the Existing Agent (i) under or related to the Loan Documents (x) in its capacity as Successor Administrative Agent, prior to the Administrative Agency Effective Date or (y) in its capacity as Successor Collateral Agent, prior to the Collateral Agency Effective Date and (ii) for any and all claims under or related to the Loan Documents that may have arisen or accrued (x) in its capacity as Successor Administrative Agent, prior to the Administrative Agency Effective Date or (y) in its capacity as Successor Collateral Agent, prior to the Collateral Agency Effective Date. Each of the Borrower and the Required Lenders, with respect to their applicable indemnification obligations under the Loan Documents, expressly agrees and confirms that the Successor Agent's right to indemnification, as set forth in the Loan Documents (as amended by this Agreement), shall apply with respect to any and all losses, claims, costs and expenses that the Successor Agent suffers, incurs or is threatened with relating to actions taken or omitted by any of the parties to this Agreement prior to the Administrative Agency Effective Date.

3. Representations and Warranties of Existing Agent. The Existing Agent hereby represents and warrants on and as of the date hereof that:

(a) Loan Status. Schedule I sets forth, to the best of its knowledge, (i) a true and correct schedule of the Lenders, the Revolving Commitments of each such Lender, the outstanding principal amount of the Revolving Loans and the Term B Loans owing to each such Lender, the accrued interest payable on the Revolving Loans and the Term B Loans owing to

each such Lender as of the date hereof, the aggregate face amount of outstanding Letters of Credit, including the beneficiary and the expiration date thereof, and the accrued Letter of Credit fees, fronting fees and L/C Issuer Fees as of the date hereof and (ii) any other fees, charges and expenses due and payable to the Existing Agent or the Lenders as of the date hereof.

(b) Documents. Schedule II sets forth each Loan Document which is in the possession of the Existing Agent or, to the knowledge of the Existing Agent after reasonable and diligent investigation, to which the Existing Agent is a party. Execution versions of each such Loan Document, together with all exhibits and schedules thereto, have been delivered to the Successor Agent prior to the date hereof. As of the date hereof there have been no amendments, supplements or consents to the Loan Documents, to which the Existing Agent has knowledge or is a party, except as otherwise provided to the Successor Agent.

(c) Defaults, Waivers, Reservation of Rights. Except as set forth on Schedule III, the Existing Agent has not (i) received any notice of a Default or Event of Default under the Credit Agreement or the other Loan Documents, (ii) executed or received a request to execute any waiver of any Default or Event of Default under the Credit Agreement or the other Loan Documents and (iii) sent any letters or notices to the Borrower purporting to reserve any of its rights under the Credit Agreement or the other Loan Documents.

(d) Authority. It is duly authorized to execute and perform its obligations under this Agreement and that such execution is not prohibited by law.

Except as expressly set forth in this Agreement, this Agreement is made by the Existing Agent without representation or warranty of any kind, nature or description. Each of the parties hereto acknowledges that the Existing Agent has not made any representation or warranty as to the financial condition of the Borrower or the value, collectibility or realizability of any Collateral or any Finance Obligations or as to the legality, validity, enforceability, perfection or priority of any Finance Obligations or Collateral.

4. Representations and Warranties of the Loan Parties. Each of the Borrower and Holdings hereby represents and warrants on and as of the date hereof that:

(a) Collateral Matters. (i) Schedule IV sets forth a complete and accurate list of all possessory Collateral delivered to the Existing Agent and all control agreements, insurance certificates, security and intellectual property filings and other filings or documents related to Liens on the Collateral or the creation, priority or perfection thereof that have been delivered or entered into on or prior to the date hereof, (ii) the Loan Parties do not have any patents, trademarks, copyrights or applications thereof that are registered with the United States Patent and Trademark Office or the United States Copyright Office required to be pledged under the Loan Documents other than such patents, trademarks, copyrights and applications described in clause 3 of Schedule IV, (iii) no mortgages, title insurance policies, abstracts, appraisals, legal opinions or other real estate security documents have been executed in connection with, or are required by, the Loan Documents with respect to any real property of any Loan Party and (iv) immediately before and immediately after giving effect to this Agreement and the completion of the actions described in Schedule VII hereto, all Uniform Commercial Code financing statements and other appropriate filings (including intellectual property filings), documents and instruments required to create and/or perfect the Liens in favor of the Existing Collateral Agent and, upon the Collateral Agency Effective Date, the Successor Collateral Agent intended to be created and/or perfected under the Loan Documents have (or shall have) been filed, registered, recorded or delivered.

(b) Loan Parties. Schedule V sets forth the exact legal name and jurisdiction of organization of each subsidiary of Holdings, together in each case with an indication of whether such subsidiary is a party to the Guaranty, the Security Agreement and/or the Pledge Agreement.

5. Representations and Warranties of the Lenders. Each Lender hereby represents and warrants on and as of the date hereof that:

(a) Authority. It is duly authorized to execute and perform its obligations under this Agreement and that such execution is not prohibited by law.

(b) Waivers. Except for the Forbearance Agreement dated January 3, 2011, between the Borrower, Holdings, the Lenders party thereto and the Existing Agent, the Second Forbearance Agreement dated January 31, 2011, between the Borrower, Holdings, the Lenders party thereto and the Existing Agent, and the Third Forbearance Agreement dated March 3, 2011, between the Borrower, Holdings, the Lenders party thereto and the Existing Agent, it has not executed or received a request to execute any waiver of any Default or Event of Default under the Credit Agreement or the other Loan Documents.

6. Covenants of Existing Agent. The Existing Agent covenants and agrees that it will: (a) deliver, or cause to be delivered, promptly to the Successor Agent execution versions of any Loan Document which is in the possession of the Existing Agent or, to the knowledge of the Existing Agent after reasonable and diligent investigation, to which the Existing Agent is a party, provided that the Existing Agent will deliver executed originals of such documents if such documents are readily available to the Existing Agent and the Successor Agent reasonably deems it is necessary to have such an executed original in its possession, (b) deliver, or cause to be delivered, promptly to the Successor Agent, copies of any written notices, financial statements and other written requests delivered by the Borrower, any Loan Party or any Lender, in accordance with the notice provisions in Section 10.02 of the Credit Agreement, to the Existing Agent after the date hereof, provided that in no event will the Existing Agent's failure to deliver, or cause to be delivered, any such written notice, financial statement or other written request cause any liability of the Existing Agent, (c) take all actions reasonably requested by the Successor Agent or its representatives at the cost of the Borrower to facilitate the transfer of information to the Successor Agent in connection with the Loan Documents and (d) take all actions reasonably requested by the Successor Agent to facilitate the satisfaction of the conditions precedent to the Collateral Agency Effective Date. The Loan Parties hereby consent to all actions taken by the Existing Agent and the Successor Agent pursuant to the immediately preceding sentence. It is the intention and understanding of the Existing Agent and the Successor Agent that any exchange of information under this Section 6 that is otherwise protected against disclosure by privilege, doctrine or rule of confidentiality (such information, "Privileged Information") (i) will not waive any applicable privilege, doctrine or rule of protection from disclosure, (ii) will not diminish the confidentiality of the Privileged Information and (iii) will not be asserted as a waiver of any such privilege, doctrine or rule by the Existing Agent or the Successor Agent. Notwithstanding anything to the contrary contained in this Agreement, the Existing Agent will have no obligation to deliver any fee or engagement letter entered into in connection with the Credit Agreement between the Existing Agent (or any of the Existing Agent's affiliates) and any of the Loan Parties.

7. Conditions Precedent to the Administrative Agency Effective Date. For purposes of this Agreement, the term "Administrative Agency Effective Date" means the first date on which all of the following conditions have been satisfied:

(a) Each of the parties hereto shall have executed and delivered this Agreement;

(b) The Successor Agent and the Borrower shall have executed and delivered a fee letter in relation to the annual agency fee and any other related fees paid to the Administrative Agent by the Borrower (the "Fee Letter");

(c) The Successor Agent, Conway, Del Genio, Gries & Co., LLC ("CDG") and Davis Polk & Wardwell LLP ("Davis Polk") shall have executed and delivered a supplement to the engagement letter dated December 22, 2010 by and among Bank of America, CDG and Davis Polk in relation to Davis Polk's engagement of CDG to perform financial advisory services to assist Davis Polk's rendering of legal advice to the Agent with respect to the Credit Agreement;

(d) The Existing Agent shall have received payment in immediately available funds of its accrued and unpaid fees, costs and expenses (including without limitation legal expenses) pertaining to its role as Existing Administrative Agent and/or Existing Collateral Agent under the Credit Agreement and its resignation as Administrative Agent and Collateral Agent;

(e) The Successor Agent shall have received payment in immediately available funds of its accrued and unpaid fees, costs and expenses (including without limitation legal expenses) pertaining to its role as Successor Administrative Agent and/or Collateral Agent under the Credit Agreement, including any fees, costs and expenses pursuant to the Fee Letter or Section 9(a) below; and

(f) The representations and warranties in this Agreement shall be true and correct on and as of such date with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct in all respects as of such earlier date.

8. Conditions Precedent to the Collateral Agency Effective Date. For purposes of this Agreement, the term "Collateral Agency Effective Date" means the first date on which all of the following conditions have been satisfied:

(a) The Administrative Agency Effective Date shall have occurred.

(b) (i) The Successor Agent shall have executed and delivered an "Additional Party Addendum" and (ii) the Borrower shall have executed and delivered an officer's certificate, in each case as required by, and satisfying the requirements of, Section 8.3 of the Intercreditor Agreement;

(c) The Existing Agent shall have confirmed in writing that it has delivered the items set forth in Schedule VI hereto to the Successor Agent and the Successor Agent shall have confirmed in writing that it has received such items;

(d) The Successor Agent shall have confirmed in writing that the actions described in Schedule VII hereto shall have been performed on or prior to the date hereof, provided that the actions set forth in item 1 of Schedule VII shall be deemed satisfied with respect to any possessory Collateral that the Existing Agent shall have failed to locate (after the exercise of reasonable effort) if the Existing Agent shall have delivered to the Successor Agent and the Borrower a customary "affidavit of loss" with respect to any such Collateral; and

(e) Any authorization from the United Stated Bankruptcy Court for the Southern District of New York required to permit the effectuation of the assignment of liens on the

Collateral Agency Effective Date contemplated hereby shall have been received (and the Borrower hereby agrees to promptly pursue any such required authorizations).

9. Interest and Fees.

(a) Commencing on the Administrative Agency Effective Date, (i) the Successor Agent shall be entitled to receive its agency fees and expenses set forth in the Fee Letter and (ii) the Existing Agent shall cease to be entitled to receive the administrative agent fees or any similar fees provided by any Loan Document or other commitment, fee or engagement letter entered into in connection therewith, provided that the Existing Agent shall remain entitled to receive any accrued and unpaid administrative agent fees and expenses owed to it pursuant to the Loan Documents. All other provisions of the Credit Agreement and the other Loan Documents providing for the payment of fees and expenses of, and providing indemnities for the benefit of, the Existing Agent shall remain in full force and effect for the benefit of the Successor Agent and, where applicable, the Existing Agent. In addition, Holdings and the Borrower, jointly and severally, agree to pay on the Administrative Agency Effective Date all reasonable and documented out-of-pocket costs and expenses of the Successor Agent (including, without limitation, any reasonable and documented legal fees) reasonably incurred by it in connection with the negotiation, preparation, execution and delivery of this Agreement and any related documents or actions taken pursuant to such documents.

(b) In the event that after the Administrative Agency Effective Date, the Existing Agent receives any amounts paid by or on behalf of or owing to any Loan Party in respect of any Loan Document or any Finance Obligation, the Existing Agent agrees that such amount shall be held in trust for the benefit of the Successor Agent and the Existing Agent shall promptly return and remit all such amounts to the Successor Agent for payment to the person entitled thereto.

10. Amendments to Loan Documents. The parties hereby agree and acknowledge that (i) from and after the Administrative Agency Effective Date, CFS shall be, and shall be deemed to be, the Administrative Agent under the Credit Agreement and the other Loan Documents and (ii) from and after the Collateral Agency Effective Date, CFS shall be, and shall be deemed to be, the Collateral Agent under the Credit Agreement and the other Loan Documents.

(a) Effective as of the Administrative Agency Effective Date, the Credit Agreement is hereby amended as follows:

(i) In furtherance of the foregoing all defined terms referencing Bank of America as the Administrative Agent in the Credit Agreement and the other Loan Documents are hereby amended to reference CFS as the Administrative Agent thereunder.

(ii) The following definitions in Section 1.01 of the Credit Agreement are hereby amended and restated to read as follows:

"Administrative Agent" means CFS, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

(iii) Section 9.06 of the Credit Agreement is amended (x) to delete the words ", which shall be (i) a Lender or an Affiliate of a Lender and (ii) a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States having combined capital and surplus and undivided profits of not less than $500,000,000"

in the second sentence thereof and (y) to delete the words "meeting the qualifications set forth above" and "qualifying" in the third sentence thereof.

(iv) Section 10.04(a) of the Credit Agreement is amended (w) to delete the words "on the Closing Date" in the first sentence thereof, (x) to replace any instance of the words "the Administrative Agent" therein with the words "each Agent", (y) to delete the words "Cahill Gordon & Reindel LLP," and (z) to add a parenthetical ")" after the first instance of the words "local counsel" therein.

(v) Section 10.04(b) of the Credit Agreement is amended (x) to replace any instance of the words "the Administrative Agent" therein with the words "each Agent" and (y) to delete the words "Cahill Gordon & Reindel LLP,".

(vi) Schedule 10.02 to the Credit Agreement is amended to delete the notice information for Bank of America and to add the following:

CFS	Cantor Fitzgerald Securities Credit Contact: 110 East 59th Street New York, NY 10022 Attention: John Stelwagon Telephone No.: (212) 829-5406 Email: jstelwagon@cantor.com Legal Contact: 110 East 59th Street New York, NY 10022 Attention: Stephen Ewald Telephone No.: (212) 829-5238 Facsimile No.: (917) 677-8224 Email: sewald@cantor.com Agency Services Contact: 900 West Trade Street Suite 725 Charlotte, NC 28202 Attention: Bobbie Young Telephone No.: (704) 374-0574 Facsimile No.: (646) 390-1764 Email: BankLoansAgency@cantor.com

(vii) Each reference to Bank of America in its capacity as Existing Administrative Agent in the exhibits to the Credit Agreement and in the other Loan Documents is hereby deemed to refer to CFS.

(b) Effective as of the Collateral Agency Effective Date, the Credit Agreement is hereby amended as follows:

(i) In furtherance of the foregoing all defined terms referencing Bank of America as the Collateral Agent in the Credit Agreement and the other Loan Documents are hereby amended to reference CFS as the Collateral Agent thereunder.

(ii) The following definitions in Section 1.01 of the Credit Agreement are hereby amended and restated to read as follows:

"Collateral Agent" means CFS, in its capacity as collateral agent for the Finance Parties under the Collateral Documents, and its successor or successors in such capacity.

(iii) Section 9.01 of the Credit Agreement is amended to add the following new paragraph at the end thereof:

"CFS shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes CFS to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Finance Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, CFS, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by CFS pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder, shall be entitled to the benefits of all provisions of this Article IX and Section 10.04 (as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto."

(iv) Each reference to Bank of America in its capacity as Existing Collateral Agent in the exhibits to the Credit Agreement and in the other Loan Documents is hereby deemed to refer to CFS.

11. Collateral Sub-Agency. Effective as of the Administrative Agency Effective Date and continuing through the Collateral Agency Effective Date, Bank of America, in its capacity as Existing Collateral Agent, appoints CFS as its sub-agent in such capacity and CFS hereby accepts such appointment.

12. Entire Agreement. This Agreement states the entire agreement and supersedes all prior agreements, written or verbal, between the parties hereto with respect to the subject matter hereof and may not be amended except in writing signed by a duly authorized representative of each of the respective parties hereto. Except as specifically modified by this Agreement, each of the Credit Agreement and the other Loan Documents are hereby ratified and confirmed in all respects and shall remain in full force and effect in accordance with their respective terms.

13. Waiver. No delay or failure on the part of any party hereto in exercising any right, power or remedy hereunder shall effect or operate as a waiver thereof, nor shall any single or partial exercise thereof or any abandonment or discontinuance of steps to enforce such right, power or remedy preclude any further exercise thereof or of any other right, power or remedy.

14. Release. Each of the Borrower, Holdings, the Lenders and their affiliates and their respective shareholders, officers, directors, employees, agents and assigns (collectively, the "Releasing Parties") hereby release, acquit and forever discharge the Existing Agent and its affiliates and their

respective shareholders, officers, directors, employees, agents and assigns (collectively, the "Released Parties") from and against any and all manner of actions, causes of action, suits, debts, controversies, damages, judgments, executions, claims (including without limitation crossclaims, counterclaims and rights of set-off and recoupment) and demands whatsoever, whether known or unknown, whether asserted or unasserted, in contract, tort, law or equity which any Releasing Party may have against any of the Released Parties by reason of any action, failure to act, matter or thing whatsoever arising from or based on facts occurring prior to the date hereof that relate to the Credit Agreement or the other Loan Documents or the transactions contemplated thereby, including but not limited to any such claim or defense to the extent that it relates to (i) the making or administration of the Loans, including without limitation, any such claims and defenses based on fraud, mistake, duress, usury or misrepresentation, or any other claim based on so-called "lender liability theories", (ii) any covenants, agreements, duties or obligations set forth in the Loan Documents or (iii) any actions or omissions of any of the Released Parties in connection with the initiation or continuing exercise of any right or remedy contained in the Loan Documents or at law or in equity with respect to the Loan Documents.

15. Submission To Jurisdiction. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) consents to service of process in the manner provided for notices in Section 10.02 of the Credit Agreement as in effect on the date hereof (except that in the case of service of process to CFS, the relevant address for such service of process shall be as set forth in Section 9 above) or at such other address of which the parties hereto shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

16. WAIVERS OF JURY TRIAL. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

17. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

18. Severability. In the event that any provision of this Agreement, or the application of such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to

Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

19. Counterparts and Facsimile. This Agreement may be signed in counterparts, all of which together shall constitute one and the same instrument. The parties hereto may provide signatures to this Agreement by facsimile or electronic mail, and such facsimile or electronic mail signatures shall be deemed to be the same as original signatures.

20. Headings. The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

21. Interpretation. This Agreement is a Loan Document for all purposes of the Credit Agreement.

22. Confirmation of Guaranties. By signing this Agreement, each Guarantor (as defined in the Guaranty) hereby confirms that (i) the Guaranteed Obligations (as defined in the Guaranty) as modified hereby (x) are entitled to the benefits of the guarantees set forth in the Guaranty and (y) constitute Guaranteed Obligations, and (ii) notwithstanding the effectiveness of the terms hereof, the Guaranty is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects.

23. Confirmation by the Loan Parties. Each Loan Party hereby confirms and ratifies all of its obligations under the Loan Documents to which it is a party. By its execution on the respective signature lines provided below, each Loan Party hereby confirms and ratifies all of its obligations and the Liens granted by it under the Collateral Documents (including the Security Agreement and Pledge Agreement) to which it is a party and confirms that all references in such Security Documents to the "Credit Agreement" (or words of similar import) refer to the Credit Agreement as amended hereby without impairing any such obligations or Liens in any respect.

[Signature Pages Follow]

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

BANK OF AMERICA, N.A., as Existing Administrative Agent and Collateral Agent

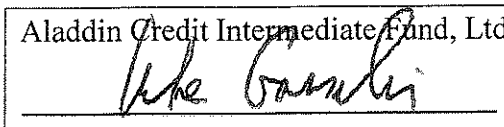
By: _____
Name: Anthony D. Heatley
Title: Senior V.P.

CANTOR FITZGERALD SECURITIES,
as Successor Administrative Agent and Collateral Agent

By: _____
Name:
Title:

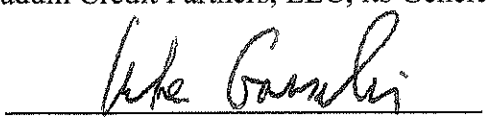
James Bond
Chief Operating Officer

Aladdin Credit Intermediate Fund, Ltd.



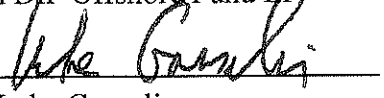
Name: Luke Gosselin
Title: Managing Member

Aladdin Credit Partners I, L.P.
By: Aladdin Credit Partners, LLC, its General Partner



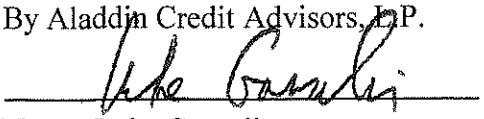
Name: Luke Gosselin
Title: Managing Member

Aladdin DIP Offshore Fund LP



Name: Luke Gosselin
Title: Managing Member

Aladdin Intermediate Fund (Ireland) II Ltd.,
By Aladdin Credit Advisors, LP.



Name: Luke Gosselin
Title: Managing Member

BABSON CLO LTD. 2003-I
BABSON CLO LTD. 2004-II
BABSON CLO LTD. 2005-I
BABSON CLO LTD. 2006-I
BABSON CLO LTD. 2007-I
ARTUS LOAN FUND 2007-I, LTD.
LOAN STRATEGIES FUNDING LLC
SUFFIELD CLO, LIMITED

By: Babson Capital Management LLC as
Collateral Manager

By: _____
Name: MICHAEL J. FEY
Title: Director

GMAM GROUP PENSION TRUST III
By: Babson Capital Management LLC as
Investment Manager

By: _____
Name: MICHAEL J. FEY
Title: Director

MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY
MASSMUTUAL ASIA LIMITED
BILL & MELINDA GATES FOUNDATION
TRUST

By: Babson Capital Management
LLC as Investment Adviser

By: _____
Name: MICHAEL J. FEY
Title: Director

DEXTERA

By 

Name:
Title:

[Signature Page to Successor First Lien Agent Agreement]

Foothill CLO I, Ltd.,

By: The Foothill Group, Inc.,
as attorney-in-fact

By: _____
Name: Sanjay Roy
Title: Director

The Foothill Group, Inc.

By:_____
Name: Sanjay Roy
Title: Director

NZC GUGGENHEIM MASTER FUND LIMITED

BY: GUGGENHEIM INVESTMENT MANAGEMENT, LLC, AS MANAGER

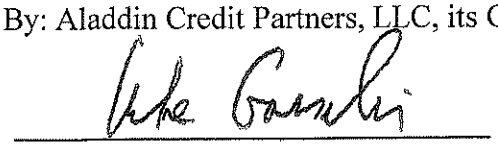
By: _____
Name: Anthony D Minella
Title: Senior Managing Director

BDIF LLC

BY: GUGGENHEIM INVESTMENT MANAGEMENT, LLC, AS INVESTMENT MANAGER

By: _____
Name: Anthony D Minella
Title: Senior Managing Director

MC Credit Products DIP SMA, L.P.
By: Aladdin Credit Partners, LLC, its General Partner



Name: Luke Gosselin
Title: Managing Member

STONE TOWER CREDIT FUNDING I LTD.
BY STONE TOWER FUND MANAGEMENT LLC
AS ITS COLLATERAL MANAGER

By _____
Name:
Title: Michael W. DelPercio
Authorized Signatory

VINACASA CLO, LTD.
By: Babson Capital Management LLC as Collateral Servicer

By: _____
Name: MICHAEL J. FEY
Title: Director

XELO VII LIMITED
By Babson Capital Management LLC as Sub-Advisor

By: _____
Name: MICHAEL J. FEY
Title: Director

[Signature Page to Successor First Lien Agent Agreement]

SBARRO, INC.,
as the Borrower

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO HOLDINGS, LLC,
as Holdings

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SUBSIDIARY GUARANTORS:

SBARRO OF LAS VEGAS, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO NEW HYDE PARK, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

UMBERTO HUNTINGTON, LLC

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

UMBERTO DEER PARK, LLC

By:
Name: STUART M. STEINBERG
Title: SECRETARY

UMBERTO HAUPPAUGE, LLC

By:
Name: STUART M. STEINBERG
Title: SECRETARY

UMBERTO HICKSVILLE, LLC

By:
Name: STUART M. STEINBERG
Title: SECRETARY

CARMELA'S, LLC

By:
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO OF LONGWOOD, LLC

By:
Name: STUART M. STEINBERG
Title: SECRETARY

CARMELA'S OF KIRKMAN LLC

By:
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO AMERICA, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO PROPERTIES, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO AMERICA PROPERTIES, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

COREST MANAGEMENT, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

UMBERTO AT THE SOURCE, LLC

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

UMBERTO WHITE PLAINS, LLC

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO PENNSYLVANIA, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO'S OF TEXAS, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO OF VIRGINIA, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

DEMEFAC LEASING CORP.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

LARKFIELD EQUIPMENT CORP.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO COMMACK, INC.

By: _____
Name: STUART M. STEINBERG
Title: SECRETARY

SBARRO VENTURE, INC.

By: _____
Name:
Title: STUART M. STEINBERG SECRETARY

SBARRO EXPRESS, LLC

By: _____
Name:
Title: STUART M. STEINBERG SECRETARY

SBARRO BLUE BELL EXPRESS LLC

By: _____
Name:
Title: STUART M. STEINBERG SECRETARY

SCHEDULE I

Loan Status

Revolving Loan

Lender	Revolving Commitments	Principal Amount of Loans Outstanding	Accrued and Unpaid Interest	Other Fees, Charges, Expenses
BANK OF AMERICA, N.A.	$4,300,000.00	$3,580,000.00	$1,664.78	$0.35
BARCLAYS BANK PLC	$4,300,000.00	$3,580,000.00	$1,664.78	$0.36
CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH	$4,300,000.00	$3,580,000.00	$1,664.78	$0.35
MIDTOWN ACQUISITIONS LP	$4,300,000.00	$3,580,000.00	$1,664.78	$0.36
OPY CREDIT CORP.	$4,300,000.00	$3,580,000.00	$1,664.78	$0.35
TOTAL	$21,500,000.00	$17,900,000.00	$8,323.90	$1.77

Fees, charges and expenses due and payable to the Existing Agent: $0.00

Term B Loan

Lender	Principal Amount of Loans Outstanding	Accrued and Unpaid Interest
AF II US BD HOLDINGS LP	$858,769.52	$482.93
ALADDIN CREDIT INTERMEDIATE FUND, LTD.	$2,746,038.89	$1,544.25
ALADDIN CREDIT PARTNERS I, L.P.	$54,200.00	$30.48
ALADDIN DIP OFFSHORE FUND LP	$592,700.00	$333.31
ALADDIN INTERMEDIATE FUND (IRELAND) II LTD.	$438,200.00	$246.42
ARTUS LOAN FUND 2007-I, LTD.	$634,415.98	$356.78
ATLANTIS FUNDING LTD	$1,111,496.80	$625.06
BABSON CLO LTD 2004-II	$3,592,042.60	$2,020.01
BABSON CLO LTD 2005-I	$183,900.51	$103.41

BABSON CLO LTD 2006 I	$3,370,310.60	$1,895.30
BABSON CLO LTD 2007 I	$198,974.26	$111.90
BABSON CLO LTD. 2003-I	$1,825,769.16	$1,026.72
BANK OF AMERICA, N.A.	$845,888.98	$475.67
BARCLAYS BANK PLC	$9,458,879.78	$5,319.24
BDIF LLC	$2,000,000.00	$1,124.72
BILL AND MELINDA GATES FOUNDATION TRUST	$4,151,933.41	$2,334.86
BLT 2009-1 LTD.	$108,189.87	$60.84
DEXTERA	$2,114,719.95	$1,189.22
FOOTHILL CLO I, LTD.	$2,116,309.96	$1,190.11
THE FOOTHILL GROUP, INC.	$8,661,308.41	$4,870.72
GENESIS CLO 2007 1 LTD	$845,887.98	$475.69
GMAM GROUP PENSION TRUST III	$1,000,000.00	$562.36
KATONAH V, LTD.	$213,163.77	$119.87
LOAN STRATEGIES FUNDING LLC	$3,113,632.24	$1,750.96
MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY	$331,623.70	$186.49
MASSMUTUAL ASIA LIMITED	$358,686.60	$201.71
MC CREDIT PRODUCTS DIP SMA, L.P.	$398,300.00	$224.00
MIDTOWN ACQUISITIONS LP	$1,935,861.94	$1,088.65
MORGAN STANLEY SENIOR FUNDING INC	$2,537,663.93	$1,427.07
NZC GUGGENHEIM MASTER FUND LIMITED	$17,879,501.79	$10,054.62
SPECIAL SITUATIONS INVESTING GROUP INC	$13,504,647.96	$7,594.39
STONE TOWER CREDIT FUNDING I LTD.	$54,508,872.58	$30,653.29
SUFFIELD CLO, LIMITED	$261,360.85	$146.98
VINACASA CLO, LTD.	$1,268,831.97	$713.53
WELLPOINT, INC.	$3,517,945.00	$1,978.33

WHIPPOORWILL ASSOCIATES, INC. PROFIT SHARING PLAN	$56,502.00	$31.77
WHIPPOORWILL DISTRESSED OPPORTUNITY FUND, L.P.	$3,281,355.01	$1,845.28
WHIPPOORWILL INSTITUTIONAL PARTNERS, L.P.	$372,495.00	$209.47
WHIPPOORWILL OFFSHORE DISTRESSED OPPORTUNITY FUND, LTD.	$3,322,119.00	$1,868.20
XELO VII LIMITED	$1,025,000.00	$576.41
TOTAL	$154,797,500.00	$87,051.02

Fees, charges and expenses due and payable to the Existing Agent: $0.00

Letters of Credit

Lender	Face Amount of Letters of Credit Outstanding	Beneficiary	Expiration Date	Letter of Credit Fees, Fronting Fees, L/C Issuer Fees
BANK OF AMERICA, N.A.	$665,054.30	Sol Goldman Investments LLC 640 Fifth Avenue, Third Floor New York, NY 10019	February 29, 2012	$83.13
BANK OF AMERICA, N.A.	$400,000.00	Madison/Fifth Associates, LLC 277 Park Avenue, Suite 4700 New York, NY 10172	March 1, 2016	$50.00
BANK OF AMERICA, N.A.	$45,833.33	Marketplace Redwood Ltd Partnership One Wells Avenue Newton, MA 02459	December 31, 2011	$5.73
BANK OF AMERICA, N.A.	$1,000,000.00	1604-1610 Broadway Owner, LLC c/o SL Green Management Corp. 420 Lexington New York, NY 10170	October 30, 2014	$125.00
BANK OF AMERICA, N.A.	$45,833.33	Marketplace Redwood Ltd Partnership One Wells Avenue Newton, MA 02459	December 31, 2011	$5.73

BANK OF AMERICA, N.A.	108,682.83	Hauppauge, LLC c/o Lerner-Heidenberg Properties 234 Closter Dock Road Closter, NJ 07624	June 30, 2011	$13.59
BANK OF AMERICA, N.A.	$212,500.00	421 Seventh Avenue, LLC 421 7th Avenue New York, NY 10001	May 31, 2011	$26.56
BANK OF AMERICA, N.A.	$35,040.30	City of San Antonio Aviation Department 9800 Airport Boulevard San Antonio, TX 78216	November 1, 2015	$4.38
BANK OF AMERICA, N.A.	$867,000.00	Performance Food Group, Inc. 12500 West Creek Parkway Richmond, VA 23238	November 8, 2013	$108.36
BANK OF AMERICA, N.A.	$90,667.44	Deer Park, LLC c/o Lerner-Heidenberg Properties 234 Closter Dock Road Closter, NJ 07624	November 30, 2014	$11.33
TOTAL	$3,470,611.53			$433.81

Fees, charges and expenses due and payable to the Existing Agent: $0.00

SCHEDULE II

Loan Documents

Credit Agreement
Notes
Guaranty
Intercreditor Agreement
Security Agreement
Pledge Agreement
Copyright Agreement (as defined in the Security Agreement)
Patent and Trademark Agreements (as defined in the Security Agreement)
Account Control Agreements (as defined in the Security Agreement)
Assumption Agreement
L/C Documents

SCHEDULE III

Default Notices

Forbearance Agreement dated as of January 3, 2011, by and among Sbarro, Inc., Sbarro Holdings, LLC, the Lenders party thereto and Bank of America, N.A., as Administrative Agent.

Second Forbearance Agreement dated as of January 31, 2011, by and among Sbarro, Inc., Sbarro Holdings, LLC, the Lenders party thereto and Bank of America, N.A., as Administrative Agent.

Third Forbearance Agreement dated as of March 3, 2011, by and among Sbarro, Inc., Sbarro Holdings, LLC, the Lenders party thereto and Bank of America, N.A., as Administrative Agent.

SCHEDULE IV

Collateral Items

1. Possessory Collateral:

Pledged Shares

Issuer	Record Owner	Certificate No.	No. Shares/Interest	Percent Pledged
Sbarro, Inc.	Sbarro Holdings, LLC	21	100	100%
Corest Management, Inc.	Sbarro, Inc.	1	10	100%
Demefac Leasing Corp.	Sbarro, Inc.	1	10	100%
Larkfield Equipment Corp.	Sbarro, Inc.	1	100	100%
Sbarro America Properties, Inc.	Sbarro America, Inc.	1	10	100%
Sbarro America, Inc.	Sbarro, Inc.	1	10	100%
Sbarro Commack, Inc.	Sbarro, Inc.	1	10	100%
Sbarro New Hyde Park, Inc.	Sbarro, Inc.	1	10	100%
Sbarro of Las Vegas, Inc.	Sbarro, Inc.	1	10	100%
Sbarro Pennsylvania, Inc.	Sbarro, Inc.	1	10	100%
Sbarro of Virginia, Inc.	Sbarro, Inc.	1	1,000	100%
Sbarro Properties, Inc.	Sbarro, Inc.	1	10	100%
Sbarro Venture, Inc.	Sbarro, Inc.	1	10	100%
Sbarro's of Texas, Inc.	Sbarro America, Inc.	2	1,000	100%
Sbarro Dominion Ltd.	Sbarro, Inc.	2 3	65 35	100% 0%
Sbarro International Services Limited	Sbarro, Inc.	5 4	65 35	100% 0%

Pledged LLC Interests

Issuer	Record Owner	Certificate No.	No. Shares/Interest	Percent Pledged
Carmela's of Kirkman LLC	Carnela's, LLC	1	10	100%
Carmela's, LLC	Sbarro, Inc.	1	10	100%
Sbarro Blue Bell Express LLC	Sbarro Express LLC	1	10	100%
Sbarro Express LLC	Sbarro, Inc.	1	10	100%
Sbarro of Longwood, LLC	Carmela's, LLC	1	10	100%
Umberto at the Source, LLC	Sbarro, Inc.	3	10	100%
Umberto Deer Park, LLC	Sbarro New Hyde Park, Inc.	1 3	8 8	100% 100%
Umberto Hauppauge, LLC	Sbarro New Hyde Park, Inc.	1 3	8 2	100% 100%
Umberto Hicksville. LLC	Sbarro New Hyde Park, Inc.	1 3	8 2	100% 100%
Umberto Huntington, LLC	Sbarro New Hyde Park, Inc.	1 3	8 2	100% 100%
Umberto White Plains, LLC	Sbarro, Inc.	3	10	100%
Puerto Rico SB, LLC	Sbarro, Inc.	2	10	65%

2. Account Control Agreements:

Entity	Bank	Account Number	Type of Account
Sbarro, Inc.	TD Bank (formerly known as Commerce Bank) 324 South Service Rd Melville, NY 11747 Attn: John Topolovec	7920384091	Concentration Acct.
		7922263905	NYC Coin
		7921271743	Depository
		7921271750	NYC Depository
		7921272394	Amex
		7921272386	MC/Visa
Sbarro, Inc. (Franchise Accounts)	TD Bank (formerly known as Commerce Bank) 324 South Service Rd Melville, NY 11747 Attn: John Topolovec	7920383911	Concentration Acct.
		7920383895	Depository
Sbarro of New Hyde Park, Inc. (Mama's)	TD Bank (formerly known as Commerce Bank) 324 South Service Rd Melville, NY 11747 Attn: John Topolovec	7919901749	Concentration Acct.
		7919901681	Depository
		7919901715	MC/Visa
		7919901707	Amex
Carmela's of Kirkman, LLC	TD Bank (formerly known as Commerce Bank) 324 South Service Rd Melville, NY 11747 Attn: John Topolovec	7922155333	Carmela's LLC. Holding
		7921271297	Carmela's of Kirkman, LLC.

Entity	Bank	Account Number	Type of Account
		7922155184	MC/Visa
		7922155192	Amex
Sbarro d/b/a Carmela's of Brooklyn	TD Bank (formerly known as Commerce Bank) 324 South Service Rd Melville, NY 11747 Attn: John Topolovec	7922155242	Sbarro Longwood Concentration Acct.
		7922155119	Depository
		7922155127	MC/Visa
		7922155234	Amex

3. Intellectual Property Filings:

(i) Copyright Agreement (as defined in the Security Agreement) filed with the United States Copyright Office with respect to the copyright described below.

(ii) Grant of Security Interest in United States Copyrights between Sbarro, Inc., as the Borrower and Natixis, New York Branch, as the Collateral Agent filed with the United States Copyright Office.

(iii) Collateral Agent Succession (Copyrights) between Natixis, New York Branch, as Existing Agent and Wilmington Trust FSB, as Successor Agent filed with the United States Copyright Office.

(iv) Patent and Trademark Agreement (as defined in the Security Agreement) filed with the Assignment Division of the U.S. Parent and Trademark Office with respect to the patents and trademarks described below.

(v) Grant of Security Interest in United States Trademarks between Sbarro, Inc., as the Borrower and Natixis, New York Branch, as the Collateral Agent filed with the Assignment Division of the U.S. Parent and Trademark Office.

(vi) Collateral Agent Succession (Trademarks) between Natixis, New York Branch, as Existing Agent and Wilmington Trust FSB, as Successor Agent filed with the Assignment Division of the U.S. Parent and Trademark Office.

COPYRIGHTS AND COPYRIGHT APPLICATIONS

Copyright	Reg. No.	Reg. Date
Home cookin' mom design.	VA1124771	5/29/02

REGISTERED TRADEMARKS

Trademark	Country	Reg. No.	Reg. Date
CAFÉ SBARRO	U.S.	1826726	3/15/94
CARMELA'S	U.S.	3230261	4/17/07
LA CUCINA DI CAPRI	U.S.	2173621	7/14/98
MAMA MAKES IT BETTER	U.S.	2622141	9/17/02
MAMA SBARRO	U.S.	2622140	9/17/02
MAMA SBARRO'S PIZZERIA	U.S.	2646881	11/5/02
SBARRO	U.S.	985647	6/4/74
SBARRO	U.S.	1991581	8/6/96
SBARRO FRESH ITALIAN COOKING	U.S.	3549590	12/23/08
SBARRO THE BEST ITALIAN CHOICE	U.S.	1834998	5/3/94
SBARRO THE ITALIAN EATERY	U.S.	1161472	7/14/81
THE BIG MINI... BIG ON TASTE	U.S.	3125530	8/8/06
TONY & BRUNO'S	U.S.	2511105	11/20/01
WHERE MAMA STILL RUNS THE KITCHEN	U.S.	1763821	4/6/93

TRADEMARK APPLICATIONS

None.

PATENTS

None.

4. UCC Filings:

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
(1) Sbarro Holdings, LLC	DE	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	20070406354*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/27/2009	20090986320			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	20090986320	02/18/2011	2011062610 4	Assignment to Wilmington Trust FSB.
(2) Sbarro, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085253*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174866			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174866	02/22/2011	2011022200 99317	Assignment to Wilmington Trust FSB.
		3. State Tax Lien							Unpaid amounts in 2009.
(3) Carmela's of Kirkman LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085568*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174525			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174525	02/22/2011	2011022200099331	Assignment to Wilmington Trust FSB.
(4) Carmela's, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085582*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174450			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174450	02/22/2011	2011022200099343	Assignment to Wilmington Trust FSB.
(5) Corest Management, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085594*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174501			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174501	02/22/2011	20110222009355	Assignment to Wilmington Trust FSB.
(6) Sbarro America Properties, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085378*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174854			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174854	02/22/2011	20110222009379	Assignment to Wilmington Trust FSB.
(7) Sbarro America, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085392*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174842			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174842	02/22/2011	20110222009939 3	Assignment to Wilmington Trust FSB.
(8) Sbarro New Hyde Park, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085316*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174789			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174789	02/22/2011	20110222009941 8	Assignment to Wilmington Trust FSB.
(9) Sbarro of Las Vegas, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085328*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174549			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174549	02/22/2011	20110222009 9420	Assignment to Wilmington Trust FSB.
(10) Sbarro of Longwood, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085342*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174804			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174804	02/22/2011	20 I 10222 00994 44	Assignment to Wilmington Trust FSB.
(11) Sbarro Pennsylvania, Inc.	PA	1. UCC	UCC-1	Bank of America, as Collateral Agent	02/01/2007	2007020105393*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	2009033101394			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	2009033101394	02/22/22011	2011022305475	Assignment to Wilmington Trust FSB.
(12) Sbarro of Virginia, Inc.	VA	1. UCC	UCC-1	Bank of America, as Collateral Agent	02/12/2007	070212 7387-8*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	090330 7355-5			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	090330 7355-5	02/22/2011	110222 4062-7	Assignment to Wilmington Trust FSB.
(13) Sbarro Properties, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085366*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174777			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174777	02/22/2011	2011022200099456	Assignment to Wilmington Trust FSB.
(14) Sbarro's of Texas, Inc.	TX	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	07-0003597586*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/27/2009	09-0008624433			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	09-0008624433	02/22/2011	11-00054310	Assignment to Wilmington Trust FSB.
(15) Umberto at the Source, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085291*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174993			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174993	02/22/2011	20110222009470	Assignment to Wilmington Trust FSB.
(16) Umberto Deer Park, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085176*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174967			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174967	02/22/2011	20110222009482	Assignment to Wilmington Trust FSB.
(17) Umberto Hauppauge, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085188*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174979			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174979	02/22/2011	20110222009949 4	Assignment to Wilmington Trust FSB.
(18) Umberto Hicksville, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085203*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174955			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174955	02/22/2011	20110222009951 9	Assignment to Wilmington Trust FSB.
		3. State Tax Lien							Unpaid amount in 2009.
(19) Umberto Huntington, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085215*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174917			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174917	02/22/2011	20110222009521	Assignment to Wilmington Trust FSB.
(20) Umberto White Plains, LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085164*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174513			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174513	02/22/2011	20110222009545	Assignment to Wilmington Trust FSB.
(21) Demefac Leasing Corp.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085607*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174498			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174498	02/22/2011	2011022200099569	Assignment to Wilmington Trust FSB.
(22) Larkfield Equipment Corp.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085431*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174486			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174486	02/22/2011	2011022200099608	Assignment to Wilmington Trust FSB.
(23) Sbarro Blue Bell Express LLC	PA	1. UCC	UCC-1	Bank of America, as Collateral Agent	02/01/2007	2007020105367*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	2009033101407			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	2009033101407	02/22/2011	2011022305879	Assignment to Wilmington Trust FSB.
(24) Sbarro Commack, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085417*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	2009033000174830			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	2009033000174830	02/22/2011	2011022200099634	Assignment to Wilmington Trust FSB.
(25) Sbarro Express LLC	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085429*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof

Debtor	Search Jurisdiction	Type of Search Requested	Type of Filing	Secured Party	Original File Date	Original File No.	New File Date	New File No.	Collateral
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174828			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174828	02/22/2011	2011022200099266	Assignment to Wilmington Trust FSB.
(26) Sbarro Venture, Inc.	NY	1. UCC	UCC-1	Bank of America, as Collateral Agent	01/31/2007	200701310085227*			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof
		2. UCC	UCC-1	Natixis, New York Branch	03/30/2009	200903300174753			All assets now owned or hereafter acquired by Debtor or in which Debtor otherwise has rights and all proceeds thereof.
			UCC-3	Wilmington Trust FSB	3/27/2009	200903300174753	02/22/2011	2011022200099278	Assignment to Wilmington Trust FSB.

* UCC-3 assignment to be filed to effect Cantor Fitzgerald Securities succession.

5. Insurance Certificates: See attached copies of existing insurance certificates.

6. Other Filings or Documents: None.

SCHEDULE V

Holdings Subsidiaries

	Legal Name of Subsidiary	Jurisdiction of Organization	Party to Guaranty?	Party to Security Agreement?	Party to Pledge Agreement?
1.	SBARRO, INC.	NEW YORK	N/A	Y	Y
2.	SBARRO OF LAS VEGAS, INC.	NEW YORK	Y	Y	Y
3.	SBARRO NEW HYDE PARK, INC.	NEW YORK	Y	Y	Y
4.	UMBERTO HUNTINGTON, LLC	NEW YORK	Y	Y	Y
5.	UMBERTO DEER PARK, LLC	NEW YORK	Y	Y	Y
6.	UMBERTO HAUPPAUGE, LLC	NEW YORK	Y	Y	Y
7.	UMBERTO HICKSVILLE, LLC	NEW YORK	Y	Y	Y
8.	CARMELA'S, LLC	NEW YORK	Y	Y	Y
9.	SBARRO OF LONGWOOD, LLC	NEW YORK	Y	Y	Y
10.	CARMELA'S OF KIRKMAN LLC	NEW YORK	Y	Y	Y
11.	SBARRO AMERICA, INC.	NEW YORK	Y	Y	Y
12.	SBARRO PROPERTIES, INC.	NEW YORK	Y	Y	Y
13.	SBARRO AMERICA PROPERTIES, INC.	NEW YORK	Y	Y	Y
14.	COREST MANAGEMENT, INC.	NEW YORK	Y	Y	Y
15.	UMBERTO AT THE SOURCE, LLC	NEW YORK	Y	Y	Y
16.	UMBERTO WHITE PLAINS, LLC	NEW YORK	Y	Y	Y
17.	SBARRO PENNSYLVANIA, INC.	PENNSYLVANIA	Y	Y	Y
18.	SBARRO'S OF TEXAS, INC.	TEXAS	Y	Y	Y
19.	SBARRO OF VIRGINIA, INC.	VIRGINIA	Y	Y	Y
20.	DEMEFAC LEASING CORP.	NEW YORK	Y	Y	Y
21.	LARKFIELD EQUIPMENT CORP.	NEW YORK	Y	Y	Y
22.	SBARRO BLUE BELL EXPRESS LLC	PENNSYLVANIA	Y	Y	Y
23.	SBARRO COMMACK, INC.	NEW YORK	Y	Y	Y
24.	SBARRO EXPRESS LLC	NEW YORK	Y	Y	Y
25.	SBARRO VENTURE, INC.	NEW YORK	Y	Y	Y
26.	SBARRO INTERNATIONAL	ENGLAND	N	N	N

	SERVICES LIMITED				
27.	SBARRO DOMINION LTD.	CANADA	N	N	N
28.	SBARRO HONG KONG LIMITED	HONG KONG	N	N	N
29.	PUERTO RICO SB, LLC	PUERTO RICO	N	N	N
30.	CARMELA'S OF KIRKMAN OPERATING, LLC	FLORIDA	N	N	N
31.	LAS VEGAS CONVENTION CENTER LLC	NEW YORK	N	N	N

SCHEDULE VI

Existing Agent Deliverables

1. Copies of the Loan Documents listed on Schedule II hereto existing as of the date hereof, together with all amendments and supplements thereto.

2. Copies of all of the Existing Agent's books and records concerning the Loans (including without limitation all of those books and records that evidence the amount of principal, interest and other sums due and exposure under the Loan Documents).

3. Such other information and data in the possession of the Existing Agent as shall be reasonably necessary for the Successor Agent to establish an Intralinks website (or substantially similar electronic transmission system) for purposes of general communications with the parties to the Loan Documents.

SCHEDULE VII

Successor Collateral Actions

1. The possessory collateral listed on Schedule IV hereto shall have been delivered to the Successor Agent.

2. Assignment Agreement relating to the Account Control Agreements listed on Schedule IV hereto in favor of the Successor Agent shall have been executed.

3. Amendments to the intellectual property filings listed on Schedule IV hereto shall have been filed naming the Successor Agent as the new assignee.

4. UCC-3 assignments with respect to the Uniform Commercial Code filings denoted with an asterisk (*) listed on the UCC chart in Schedule IV hereto shall have been filed.

5. Insurance certificates substantially similar to those described on Schedule IV shall have been obtained naming the Successor Agent as an additional insured and loss payee.

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE 01/30/2007

PRODUCER 877-945-7378

Willis North America, Inc.
26 Century Blvd.
P. O. Box 305191
Nashville, TN 372305191

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Sbarro, Inc.
and Subsidiaries
401 Broadhollow Road
Melville, NY 11747

INSURERS AFFORDING COVERAGE	NAIC#
INSURER A: Zurich American Insurance Company	16535-003
INSURER B: Vigilant Insurance Company	20397-001
INSURER C: St. Paul Fire and Marine Insurance Compan	24767-001
INSURER D: National Surety Corporation	21881-001
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY	GLO298419005	6/1/2006	6/1/2007	EACH OCCURRENCE	$ 1,000,000
		[X] COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurence)	$ 250,000
		[ ] CLAIMS MADE [X] OCCUR				MED EXP (Any one person)	$ 5,000
						PERSONAL & ADV INJURY	$ 1,000,000
						GENERAL AGGREGATE	$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$ 1,000,000
		[ ] POLICY [ ] PRO-JECT [ ] LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		[ ] ANY AUTO					
		[ ] ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		[ ] SCHEDULED AUTOS					
		[ ] HIRED AUTOS				BODILY INJURY (Per accident)	$
		[ ] NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		[ ] ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
B		EXCESS LIABILITY	79753756	6/1/2006	6/1/2007	EACH OCCURRENCE	$ 10,000,000
		[X] OCCUR [ ] CLAIMS MADE				AGGREGATE	$ 10,000,000
							$
		[ ] DEDUCTIBLE					$
		[ ] RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS / OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
C		OTHER Excess Liability	QI09002276	6/1/2006	6/1/2007	$15,000,000 xs $10,000,000	
B			79816712	6/1/2006	6/1/2007	$25,000,000 xs $25,000,000	
D			SHN00088067095	6/1/2006	6/1/2007	$25,000,000 xs $50,000,000	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Bank of America, N.A. as Collateral Agent is added as an Additional Insured as its interest may appear in agreement with MidOcean SBR Holdings, LLC and Sbarro, Inc.

CERTIFICATE HOLDER

Bank of America, N.A. as Collateral Agent
Attn: Betty S. Philips VP
Change Consultant, Bank of America,
Mail Code: TX1-492-14-06
Bank of America Plaza, 901 Main Street
Dallas, TX 75202-3714

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL [illegible] MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT [illegible]

AUTHORIZED REPRESENTATIVE

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY): 01/29/2007

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

PRODUCER NAME, CONTACT PERSON AND ADDRESS: PHONE (A/C, No, Ext): 877-945-7378 Willis North America, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 372305191	COMPANY NAME AND ADDRESS: NAIC NO: 27855-001 Zurich American Insurance Company of Illinois 135 S. LaSalle Street Dept 8745 Chicago, IL 60674-8745
FAX (A/C, No): 888-467-2378 E-MAIL ADDRESS: certificates@willis.com	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH
CODE: SUB CODE: AGENCY CUSTOMER ID #:	POLICY TYPE: Commercial Property
NAMED INSURED AND ADDRESS Sbarro Inc./MidOcean SBR Holding, LLC & Subsidiaries 401 Broadhollow Road Melville, NY 11747	LOAN NUMBER: POLICY NUMBER: MLP9138028 EFFECTIVE DATE: 01/30/2007 EXPIRATION DATE: 06/01/2007 CONTINUED UNTIL TERMINATED IF CHECKED: ☐
ADDITIONAL NAMED INSURED(S)	THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required) ☒ BUILDING OR ☒ BUSINESS PERSONAL PROPERTY

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION PERILS INSURED: ☐ BASIC ☐ BROAD ☐ SPECIAL ☒ Carrier All Risk Form

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: $ $50,000,000 per DED: $25,000

	YES	NO	N/A	
☒ BUSINESS INCOME ☒ RENTAL VALUE	X			If YES, LIMIT: $50,000,000 per X Actual Loss Sustained # of months: 24
BLANKET COVERAGE	X			If YES, indicate value(s) reported on property identified above: $ $50,000,000
TERRORISM COVERAGE	X			Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?	X			
IS DOMESTIC TERRORISM EXCLUDED?		X		
LIMITED FUNGUS COVERAGE	X			If YES, LIMIT: Included DED: $25,000
FUNGUS EXCLUSION (If "YES", specify organization's form used)	X			Carrier Form
REPLACEMENT COST	X			
AGREED VALUE		X		
COINSURANCE		X		If YES, %
EQUIPMENT BREAKDOWN (If Applicable)	X			If YES, LIMIT: $25,000,000 per DED: $25,000
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg	X			
- Demolition Costs	X			If YES, LIMIT: $1,000,000 per DED: $25,000
- Incr. Cost of Construction	X			If YES, LIMIT: $1,000,000 per DED: $25,000
EARTH MOVEMENT (If Applicable)	X			If YES, LIMIT: $25,000,000 per DED: $25,000
FLOOD (If Applicable)	X			If YES, LIMIT: $25,000,000 per DED: $25,000
WIND / HAIL (If Subject to Different Provisions)		X		If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS	X			

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ADDITIONAL INTEREST

	MORTGAGEE		CONTRACT OF SALE
X	LENDERS LOSS PAYABLE		

NAME AND ADDRESS
Bank of America N.A. as Collateral Agent
Attn: Betty S. Phillips, Vice
Bank of America Plaza
901 Main Street
Mail Code: TX1-492-14-06
Dallas, TX 75202-3714

LENDER SERVICING AGENT NAME AND ADDRESS

AUTHORIZED REPRESENTATIVE

EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS – Including Special Conditions (Use only if more space is required)

Remarks

100 Year Flood Zone: 2% PD 2% TE Combined Deductible with $1,500,000 minimum per occurrence
EQ Zone 1: 5%PD 5% TE Combined with $250,000 minimum per occurrence

All other subject to the Terms, Conditions, Exclusions and sub-limits of the policy.

POLICY NUMBER: COMMERCIAL PROPERTY

THIS ENDORSEMENT CHNGES THE POLICY. PLEASE READ IT CAREFULLY

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
BUILDERS' RISK COVERAE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPRTY POLICY

SCHEDULE

Provisions Applicable		
Loss Payable	Lender's Loss Payable	Contract of Sale

Prem. No.	Bldg. No.	Description of Property	Loss Payee (Name & Address)
		Per Schedule on File	Bank of America,N.A. as Collateral Agent Bank of America Plaza 901 Main Street Dallas, TX 75202-3714

A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

The following is added to the LOSS PAYMENT Loss Condition, as indicated in the Declarations or by and "X" in the Schedule:

B. LOSS PAYABLE
For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and

2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

C. LENDER'S LOSS PAYABLE

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
   a) Warehouse receipts;
   b) A contract for deed;
   c) Bills of lading;
   d) Financing statements; or
   e) Mortgages, deeds of trust or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
   a) We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
   b) The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
   c) If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
      1) Pay any premium due under this Coverage Part at our request if you have failed to do so;
      2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
      3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

   All of the terms of this Coverage Part will then apply directly to the Loss Payee.
   d) If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of the Coverage Part:
      1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
      2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

      At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.
3. If we cancel this policy, we will give written notice to the Loss Payee at least:
   a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
   b) 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

D. CONTRACT OF SALE

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
   1. Adjust losses with you; and
   2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the OTHER INSURANCE Condition:

   For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

  CP 12 18 10 91

ACORD® EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY): 01/29/2007

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

PRODUCER NAME, CONTACT PERSON AND ADDRESS: Willis North America, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 372305191	COMPANY NAME AND ADDRESS: Zurich American Insurance Company of Illinois 135 S. LaSalle Street Dept 8745 Chicago, IL 60674-8745
PHONE (A/C, No, Ext): 877-945-7378	NAIC NO: 27855-001
FAX (A/C, No): 888-467-2378 E-MAIL ADDRESS: certificates@willis.com	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH
CODE: SUB CODE:	POLICY TYPE: Commercial Property
AGENCY CUSTOMER ID #:	
NAMED INSURED AND ADDRESS: Sbarro Inc./MidOcean SBR Holding, LLC & Subsidiaries 401 Broadhollow Road Melville, NY 11747	LOAN NUMBER: POLICY NUMBER: MLP9138028
	EFFECTIVE DATE: 01/30/2007 EXPIRATION DATE: 06/01/2007 CONTINUED UNTIL TERMINATED IF CHECKED: ☐
ADDITIONAL NAMED INSURED(S):	THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION (Use REMARKS on page 2, if more space is required) ☒ BUILDING OR ☒ BUSINESS PERSONAL PROPERTY

LOCATION/DESCRIPTION:

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION PERILS INSURED: ☐ BASIC ☐ BROAD ☐ SPECIAL ☒ Carrier All Risk Form

COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: $ $50,000,000 per DED: $25,000

	YES	NO	N/A	
☒ BUSINESS INCOME ☒ RENTAL VALUE	X			If YES, LIMIT: $50,000,000 per X Actual Loss Sustained # of months: 24
BLANKET COVERAGE	X			If YES, indicate value(s) reported on property identified above: $ $50,000,000
TERRORISM COVERAGE	X			Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?	X			
IS DOMESTIC TERRORISM EXCLUDED?		X		
LIMITED FUNGUS COVERAGE	X			If YES, LIMIT: Included DED: $25,000
FUNGUS EXCLUSION (If "YES", specify organization's form used)	X			Carrier Form
REPLACEMENT COST	X			
AGREED VALUE		X		
COINSURANCE		X		If YES, %
EQUIPMENT BREAKDOWN (If Applicable)	X			If YES, LIMIT: $25,000,000 per DED: $25,000
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg	X			
- Demolition Costs	X			If YES, LIMIT: $1,000,000 per DED: $25,000
- Incr. Cost of Construction	X			If YES, LIMIT: $1,000,000 per DED: $25,000
EARTH MOVEMENT (If Applicable)	X			If YES, LIMIT: $25,000,000 per DED: $25,000
FLOOD (If Applicable)	X			If YES, LIMIT: $25,000,000 per DED: $25,000
WIND / HAIL (If Subject to Different Provisions)		X		If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS	X			

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE ADDITIONAL INTEREST NAMED BELOW, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

ADDITIONAL INTEREST

☐ MORTGAGEE ☐ CONTRACT OF SALE
☒ LENDERS LOSS PAYABLE ☐

NAME AND ADDRESS:
Bank of America N.A. as Collateral Agent
Attn: Betty S. Phillips, Vice
Bank of America Plaza
901 Main Street
Mail Code: TX1-492-14-06
Dallas, TX 75202-3714

LENDER SERVICING AGENT NAME AND ADDRESS:

AUTHORIZED REPRESENTATIVE

EVIDENCE OF COMMERCIAL PROPERTY INSURANCE REMARKS – Including Special Conditions (Use only if more space is required)

Remarks

100 Year Flood Zone: 2% PD 2% TE Combined Deductible with $1,500,000 minimum per occurrence
EQ Zone 1: 5%PD 5% TE Combined with $250,000 minimum per occurrence

All other subject to the Terms, Conditions, Exclusions and sub-limits of the policy.

POLICY NUMBER: COMMERCIAL PROPERTY

THIS ENDORSEMENT CHNGES THE POLICY. PLEASE READ IT CAREFULLY

LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
BUILDERS' RISK COVERAE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPRTY POLICY

SCHEDULE

Provisions Applicable		
Loss Payable	Lender's Loss Payable	Contract of Sale

Prem. No.	Bldg. No.	Description of Property	Loss Payee (Name & Address)
			See Pae 1C

A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

The following is added to the LOSS PAYMENT Loss Condition, as indicated in the Declarations or by and "X" in the Schedule:

B. **LOSS PAYABLE**
For Covered Property in which both you and a Loss Payee shown in the Schedule or in the Declarations have an insurable interest, we will:

1. Adjust losses with you; and

  CP 12 18 10 91

2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.

C. LENDER'S LOSS PAYABLE

1. The Loss Payee shown in the Schedule or in the Declarations is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:
   a) Warehouse receipts;
   b) A contract for deed;
   c) Bills of lading;
   d) Financing statements; or
   e) Mortgages, deeds of trust or security agreements.
2. For Covered Property in which both you and a Loss Payee have an insurable interest:
   a) We will pay for covered loss or damage to each Loss Payee in their order of precedence, as interests may appear.
   b) The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
   c) If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:
      1) Pay any premium due under this Coverage Part at our request if you have failed to do so;
      2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
      3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

   All of the terms of this Coverage Part will then apply directly to the Loss Payee.
   d) If we pay the Loss Payee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of the Coverage Part:
      1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and
      2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

      At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.
3. If we cancel this policy, we will give written notice to the Loss Payee at least:
   a) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
   b) 30 days before the effective date of cancellation if we cancel for any other reason.
4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

D. CONTRACT OF SALE

1. The Loss Payee shown in the Schedule or in the Declarations is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
   1. Adjust losses with you; and
   2. Pay any claim for loss or damage jointly to you and the Loss Payee, as interests may appear.
3. The following is added to the OTHER INSURANCE Condition:

   For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

