

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Summit Business Media Holding Company,
et al.,

Debtors.

Chapter 11

Case No. 11-10231 (____)

Joint Administration Requested

MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING POST-PETITION SECURED FINANCING PURSUANT TO SECTIONS 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) AND 503(b) OF THE BANKRUPTCY CODE; (II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL; (III) PROVIDING ADEQUATE PROTECTION TO THE EXISTING FIRST LIEN SECURED PARTIES AND EXISTING SECOND LIEN LENDERS PURSUANT TO SECTIONS 361, 362, 363 AND 364 OF THE BANKRUPTCY CODE; (IV) MODIFYING THE AUTOMATIC STAY PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY CODE; AND (V) SCHEDULING A FINAL HEARING

Summit Business Media Holding Company (“**Summit**”), together with its affiliated debtors and debtors-in-possession (collectively, the “**Debtors**”)¹, by and through their undersigned counsel, respectfully submit this motion (this “**Motion**”) for entry of interim and final orders, pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), and 503(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Bankruptcy Rules**”),

- a) authorizing the Debtors to obtain post-petition financing pursuant to sections 363

¹ The Debtors in these Cases are: (i) Summit Business Media Holding Company (5547); (ii) Summit Business Media Intermediate Holding Company, LLC (5392); (iii) The National Underwriter Company (8770); (iv) Research Holdings, LTD. (5228); (v) Futures Magazine, Inc. (1102); (vi) NUCO Business Information, LLC (7364); (vii) Agent Media Corporation (3991); (viii) Judy Diamond Associates, Inc. (0517); and (ix) Mining INDABA, LLC (4592). Individual case numbers are available on reasonable request.

and 364 of the Bankruptcy Code by entering into a secured, post-petition, debtor-in-possession credit facility on a super-priority and priming basis (as may be amended, supplemented or otherwise modified from time to time, the “**DIP Facility**”) providing for a multiple-draw, term loan facility in an aggregate principal amount not to exceed \$5 million for operating costs in accordance with the Budget (as defined in the DIP Credit Agreement (as defined below); the initial Budget is attached to this Motion as Exhibit B) (the “**DIP Loans**”);

- b) authorizing the Debtors to execute and enter into the DIP Facility among the Debtors, Bank of Montreal, Chicago Branch, as agent (the “**DIP Agent**”) and post-petition lender, and those certain lender institutions that are signatories to the DIP Facility (collectively with the DIP Agent, the “**DIP Lenders**”) and all documents, agreements or instruments in connection with the DIP Loans or related thereto (including the DIP Facility, DIP Credit Agreement (as defined below), Interim Order (as defined below), and Final Order (as defined below) and all other agreements, documents, notes or instruments related to the DIP Loans, collectively, the “**DIP Loan Documents**”) and to perform such other and further acts as may be required in connection with the DIP Loan Documents;
- c) granting priming liens and super-priority claims to and on behalf of and for the benefit of the DIP Lenders in all DIP Collateral (as defined in the DIP Credit Agreement (as defined below)) in accordance with the DIP Loan Documents to secure any and all of the Post-petition Obligations, which shall mean the “Obligations” as defined in the DIP Credit Agreement (as defined below);
- d) granting adequate protection to Bank of Montreal, Chicago Branch, as administrative agent (the “**Existing First Lien Agent**”) and as lender, and to those other lenders (together with the Existing First Lien Agent, the “**Existing**”

First Lien Lenders”) that are parties to:

- i. that certain Amended and Restated First Lien Credit Agreement dated as of July 6, 2007, as amended from time to time (the “**Existing First Lien Credit Agreement**”), among the Existing First Lien Agent, as administrative agent, the Existing First Lien Lenders, as lenders, and Summit Business Media Intermediate Holding Company, LLC, as borrower;
- ii. that certain Parent Guaranty, dated as of November 3, 2006, by Summit Business Media Holding Company, as guarantor, in favor of the Existing First Lien Agent for the benefit of each of the Existing First Lien Secured Parties (as defined below) (the “**Parent Guaranty**”);
- iii. that certain Subsidiary Guaranty, dated as of November 3, 2006, by The National Underwriter Company, as successor-by-merger to Summit Business Media, LLC and Highline Business Media, LLC, as guarantor, in favor of the Existing First Lien Agent for the benefit of each of the Existing First Lien Secured Parties (as defined below), together with certain supplements thereto, pursuant to which the other debtor-affiliates of Summit Business Media Intermediate Holding Company, LLC guaranteed the obligations owed to the Existing First Lien Secured Parties (as defined below) under the Existing First Lien Credit Agreement (collectively, the “**Subsidiary Guaranty**”);
- iv. that certain Pledge and Security Agreement, dated as of November 3, 2006, by the Debtors and certain of their predecessors, in favor of the Existing First Lien Agent, together with certain supplements thereto, pursuant to which substantially all of the Debtors’ assets were pledged to the Existing First Lien Secured Parties (as defined below) to secure the obligations to the Existing First Lien Lenders under the Existing First Lien Credit Agreement and to

- secure the obligations owed to the Collar Provider (as defined below);
- v. those certain Trademark Security Agreements, Copyright Security Agreements and deposit account control agreements among certain of the Debtors and the Existing First Lien Agent whereby certain of the Debtors pledged certain intellectual property to secure, and granted control rights with respect to certain cash accounts in connection with, the obligations to the Existing First Lien Lenders under the Existing First Lien Credit Agreement and the obligations owed to the Collar Provider (as defined below); and
 - vi. that certain First Lien Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 7, 2006, whereby The National Underwriter Company granted in favor of the Existing First Lien Agent a mortgage to certain real and personal property located in Kenton County, Kentucky.

The security agreements, mortgage, pledge agreements, and collateral assignments listed in clauses (iv) through (vi) above are hereinafter referred to as the “**Pre-petition First Lien Security Agreements**”; the Pre-petition First Lien Security Agreements together with the Existing First Lien Credit Agreement, the Parent Guaranty, the Subsidiary Guaranty, and the Interest Rate Collar (as defined below) are hereinafter referred to as the “**Pre-petition First Lien Transaction Documents**”; any and all liens and security interests created under any Pre-petition First Lien Security Agreement are hereinafter referred to collectively as the “**First Lien Lenders’ Pre-petition Liens**”; any and all collateral posted, transferred, perfected, assigned, pledged or attached under any Pre-petition First Lien Security Agreement are hereinafter referred to collectively as the “**Pre-petition Collateral**”; any Pre-petition Collateral also constituting cash collateral

under section 363(a) of the Bankruptcy Code is hereinafter referred to as the **“Cash Collateral”**; all obligations, loans, financial accommodations and other amounts owing under, or in connection with, the Pre-petition First Lien Transaction Documents are hereinafter referred to as the **“Pre-petition First Lien Obligations.”**

- e) granting adequate protection to Merrill Lynch Capital Services, Inc., the interest rate collar provider (the **“Collar Provider”** and with the Existing First Lien Lenders, the **“Existing First Lien Secured Parties”**), pursuant to that certain ISDA Master Agreement and the Schedule to the Master Agreement, each between the Collar Provider and Summit Business Media Intermediate Holding Company, LLC (the **“Counterparty”**) and each dated as of August 7, 2007 (collectively, the **“Master Agreement”**) and that certain Zero-Cost Collar Transaction, ML Reference No. 07DL24330, 3704257 (the **“Transaction”**) between the Collar Provider and the Counterparty, evidenced by the Confirmation dated as of August 7, 2007, as amended from time to time by the parties, that is subject to and forms part of the Master Agreement (collectively, the **“Interest Rate Collar”**);
- f) granting adequate protection, junior in all respects to the Post-petition Obligations, all liens, claims and protections granted to the DIP Lenders and Existing First Lien Secured Parties by the DIP Loan Documents, the Pre-petition First Lien Obligations and the First Lien Lenders’ Pre-petition Liens, to Ares Capital Corporation, as administrative agent (the **“Existing Second Lien Agent”**) and as lender, and to those other lenders (together with the Existing Second Lien Agent, the **“Existing Second Lien Lenders”**) that are parties to:
 - i. that certain the Amended and Restated Second Lien Credit Agreement dated

July 6, 2007, as amended from time to time (the “**Existing Second Lien Credit Agreement**”), among Summit Business Media Intermediate Holding Company, LLC, the Existing Second Lien Agent and the Existing Second Lien Lenders;

- ii. that certain Parent Guaranty, dated as of November 3, 2006, by Summit Business Media Holding Company, as guarantor, in favor of the Existing Second Lien Agent for the benefit of each of the Existing Second Lien Lenders (the “**Second Lien Parent Guaranty**”);
- iii. that certain Subsidiary Guaranty, dated as of November 3, 2006, by The National Underwriter Company, as successor-by-merger to Summit Business Media, LLC and Highline Business Media, LLC, as guarantor, in favor of the Existing Second Lien Agent for the benefit of each of the Existing Second Lien Lenders, together with certain supplements thereto, pursuant to which the other debtor-affiliates of Summit Business Media Intermediate Holding Company, LLC guaranteed the obligations owed to the Existing Second Lien Lenders under the Existing Second Lien Credit Agreement (collectively, the “**Second Lien Subsidiary Guaranty**”);
- iv. (1) that certain Pledge and Security Agreement, dated as of November 3, 2006, by the Debtors and certain of their predecessors, in favor of the Existing Second Lien Agent, together with certain supplements thereto, (2) those certain Trademark Security Agreements, Copyright Security Agreements and deposit account control agreements among certain of the Debtors and the Existing Second Lien Agent whereby certain of the Debtors pledged certain intellectual property to secure, and granted control rights with respect to certain cash accounts in connection with, the obligations to the Existing

Second Lien Lenders under the Existing Second Lien Credit Agreement and (3) that certain Second Lien Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 7, 2006, whereby The National Underwriter Company granted in favor of the Existing Second Lien Agent a mortgage to certain real and personal property located in Kenton County, Kentucky, pursuant to which the Pre-petition Collateral was pledged to secure the obligations to the Existing Second Lien Lenders under the Existing Second Lien Credit Agreement on a subordinated basis to the First Lien Lenders' Pre-petition Liens;

The security agreements, mortgage, pledge agreements, collateral assignments listed in clause (iv) above are hereinafter referred to as the “**Pre-petition Second Lien Security Agreements**”; the Pre-petition Second Lien Security Agreements together with the Existing Second Lien Credit Agreement, the Second Lien Parent Guaranty and the Second Lien Subsidiary Guaranty are hereinafter referred to as the “**Pre-petition Second Lien Transaction Documents**” and together with the Pre-petition First Lien Transaction Documents, the “**Pre-petition Transaction Documents**”; any and all liens and security interests created under any Pre-petition Second Lien Security Agreement are hereinafter referred to collectively as the “**Second Lien Lenders' Pre-petition Liens**” and together with the First Lien Lenders' Pre-Petition Liens, the “**Pre-petition Liens**”; all obligations, loans, financial accommodations and other amounts owing under, or in connection with, the Pre-petition Second Lien Transaction Documents are hereinafter referred to as the “**Pre-petition Second Lien Obligations**” and together with the Pre-petition First Lien Obligations, the “**Pre-petition Obligations**.”

g) authorizing the Debtors to use cash collateral (as such term is defined in the

Bankruptcy Code) in which the Existing First Lien Secured Parties and the Existing Second Lien Lenders have an interest;

- h) approving certain stipulations by the Debtors with respect to the Pre-petition Transaction Documents and the Pre-petition Liens;
- i) pending a final hearing on the Motion (the “**Final Hearing**”), approving the DIP Loans under the DIP Facility in the principal amount not to exceed \$2.5 million to and including the date on which the final order is entered (the “**Final Order**”);
- j) modifying the automatic stay, under section 362 of the Bankruptcy Code, to, among other things, permit the DIP Lenders to accelerate the repayment of amounts due and to terminate all commitments under the DIP Facility upon the earlier to occur of: (i) the termination, acceleration or maturity of the Post-petition Obligations as set forth in the DIP Loan Documents; and (ii) the Interim Order (as defined below) or Final Order ceases to be in full force and effect;
- k) subject to and only effective upon the entry of the Final Order granting such relief, limiting the Debtors’ right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and
- l) scheduling the Final Hearing within 45 days of the entry of the Interim Order (as defined below) and approve notice with respect thereto in accordance with Rule 4001(c)(2) of the Bankruptcy Rules.

In support of this Motion, the Debtors rely on and incorporate by reference the Declaration of Thomas M. Flynn in Support of Debtors’ Chapter 11 Petitions and First Day Motions. In further support of this Motion, the Debtors respectfully state as follows:

Jurisdiction and Venue

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

2. Venue of the above-captioned bankruptcy cases (these “**Cases**”) and this Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), and 503(b) of the Bankruptcy Code; Bankruptcy Rule 4001; and Local Bankruptcy Rule 4001-2.

Factual Background

4. On January 25, 2011 (the “**Petition Date**”), the Debtors each filed voluntary petitions for relief under the Bankruptcy Code in an effort to preserve and maximize the value of their estates. No request has been made for the appointment of a trustee or examiner in these Cases, and the Debtors continue to operate their businesses and manage their properties as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no Official Committee of Unsecured Creditors has been appointed in these Cases.

5. Summit is a Delaware corporation that wholly owns Summit Business Media Intermediate Holding Company, LLC, a Delaware limited liability company (“**Summit Intermediate**”). Summit Intermediate wholly owns The National Underwriter Company, an Ohio corporation (“**National Underwriter**”), which in turn wholly owns six (6) distinct subsidiary companies which comprise the remaining Debtors (collectively, the “**Subsidiaries**”).

6. The Debtors collectively employ approximately 400 people (including open positions) across the United States and are a leading business to business media and information provider for the insurance, investment, and professional services markets. The Debtors’ business is organized into four divisions: Media, Event, Reference, and Data.

7. The Debtors began operations in November 2006 following their acquisition of two of their present businesses. The Debtors made five additional acquisitions over the next two years to assume their present form. These acquisitions were financed by a combination of equity investment and debt provided by the Existing First Lien Secured Parties and Existing Second

Lien Lenders and their predecessors as outlined below. From inception until the present, 85% of the Debtors' equity interests have been owned by affiliates of Wind Point Partners and the balance of 15% has been owned by members of the Debtors' management. The Debtors have never paid any dividends or made other comparable payments on account of their equity interests.

8. As of the Petition Date, the Debtors collectively had unpaid pre-petition debt and general unsecured claims in an aggregate amount of approximately \$252 million.

9. As of the Petition Date, the Debtors had incurred other unsecured claims in an estimated aggregate amount of \$8,150,000.

10. Given their highly leveraged capital structure and their constrained liquidity profile, the Debtors concluded that a full balance sheet restructuring was necessary. The Debtors carefully evaluated a number of options to address their financial issues. Those efforts included sharing information and engaging in discussions with a variety of the Debtors' stakeholders with the goal of restructuring the Debtors' balance sheet to bring it into line with the Debtors' current debt servicing capabilities and culminated in an agreement on the terms of a financial restructuring.

11. The terms of this restructuring have been documented in a Restructuring Support Agreement between the Debtors and (a) the holders of approximately 83% in amount and 65% in number of the claims outstanding under the Existing First Lien Credit Agreement and (b) the holders of approximately 85% in amount and 78% in number of the claims outstanding under the Existing Second Lien Credit Agreement (the “**Restructuring Support Agreement**”), which is being filed substantially contemporaneously herewith. The Restructuring Support Agreement provides that the parties have agreed to and will support the Debtors' proposed Joint Plan of Reorganization (the “**Plan**”) which also will be filed substantially contemporaneously herewith. It further provides for the specific terms of the Debtors' most important financial and

organizational documents to be entered into upon consummation of the Plan, all as reflected in the agreements and other documents attached as exhibits to the Restructuring Support Agreement.

Debtors' Urgent Need for Post-petition Financing and Use of Cash Collateral

12. An immediate and critical need exists for the Debtors to obtain funds and use Pre-Petition Collateral and Cash Collateral in order to, among other things: (a) continue the orderly operation of their business; (b) maintain their business relationships with vendors, suppliers and customers; and (c) make payroll, capital expenditures and satisfy other working capital and operational needs. The access of 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 value of the Debtors and to a successful reorganization of the Debtors.

13. As set forth above, the Pre-petition Obligations are secured by Pre-petition Liens on substantially all of the Debtors' assets, including the Cash Collateral. The Debtors do not have any unencumbered cash with which to operate their businesses. The Existing First Lien Secured Parties and Existing Second Lien Lenders are unwilling to permit the Debtors to use the Cash Collateral on terms other than those set forth herein and in the DIP Loan Documents.

14. Even the use of Cash Collateral, however, would be insufficient to fund the Debtors' ongoing funding requirements for the operation of their businesses in an orderly manner. The Debtors need to supplement the use of Cash Collateral with the financing to be provided under the DIP Facility. The Debtors' use of Cash Collateral and the proceeds of the DIP Facility shall be limited to expenditures permitted under that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement (as may be amended, supplemented or

otherwise modified from time to time, the “**DIP Credit Agreement**”)² and other DIP Loan Documents.

15. Accordingly, in order to obtain the use of Cash Collateral and the financing available under the DIP Facility, and to avoid immediate and irreparable harm to the Debtors’ business operations and their estates, the Debtors seek emergency interim approval of this Motion.

16. By this Motion, the Debtors request entry of an interim order (the “**Interim Order**”) authorizing the Debtors to use Cash Collateral and obtain up to \$2.5 million in interim secured financing and entry of the Final Order authorizing Debtors to obtain up to \$5 million in secured financing, subject to the limitations contained in the DIP Loan Documents.

The DIP Facility

17. Pursuant to Federal Rule of Bankruptcy Procedure 4001, the Debtors set forth significant elements of the DIP Facility and DIP Loan Documents as follows³:

Name of Each Entity with an Interest in Cash Collateral Interim Order ¶ 4	Bank of Montreal, Chicago Branch, as the administrative agent under the Existing First Lien Credit Agreement, certain other parties as may be lenders from time to time under the Existing First Lien Credit Agreement, and Merrill Lynch Capital Services, Inc., the interest rate collar provider with respect to the Existing First Lien Credit Agreement. Ares Capital Corporation, as the administrative agent under the Existing Second Lien Credit Agreement, and certain other parties as may be lenders from time to time under the Existing Second Lien Credit Agreement.
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² Except to the extent defined herein, capitalized terms used herein shall have the definitions set forth in the DIP Credit Agreement. The DIP Credit Agreement is attached hereto as Exhibit A.

³ The terms and conditions of the DIP Facility set forth in this Motion are intended solely for informational purposes to provide the Court and interested parties with a brief overview of the significant terms thereof and should only be relied upon as such. For a complete description of the terms and conditions of the DIP Facility, reference should be made to the DIP Credit Agreement and the Interim Order. The summary herein is qualified in its entirety by reference to such documents. Parties are strongly encouraged to read the operative documents. In the event there is a conflict or inconsistency between this Motion and the operative documents, the operative documents shall control in all respects.

<p>Amount of DIP Facility</p> <p>Interim Order ¶ 9</p> <p>DIP Credit Agreement § 2.1</p>	<p>The interim maximum amount is \$2.5 million and final maximum amount is \$5 million under a multiple-draw, term loan facility.</p>
<p>Use of Available Cash and Proceeds of Loans; Compliance with Budget</p> <p>Interim Order ¶¶ 10 and 12</p> <p>DIP Credit Agreement § 2.1.3</p>	<p>Available Cash and proceeds of DIP Loans shall be available to finance the working capital needs of the Debtors and other general corporate purposes while the Debtors are under Chapter 11 protection, including the payment of expenses associated with these Cases, provided, however, that the Debtors shall use Available Cash and proceeds of DIP Loans solely to make payments of expenditures provided in the Budget, subject to permitted variances and consented to deviations, and Post-trigger Carve-Out Expenses.</p> <p>The initial Budget is attached to this Motion as <u>Exhibit B</u>.</p>
<p>Carve-Out Expenses</p> <p>Interim Order ¶ 19</p> <p>DIP Credit Agreement §§ 1.1 and 2.1</p>	<p>The Carve-Out Expenses shall be paid pursuant to the DIP Facility and shall consist of: (a) the (i) unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); and (ii) budgeted and unpaid professional fees and expenses of the Debtors and any official committee appointed in the Debtors' Cases both to the extent incurred prior to the date of the delivery of a written notice delivered by the DIP Agent following the occurrence of an Event of Default expressly stating that the Carve-Out Expenses have been triggered, plus (b) after the date of the delivery of such notice, (i) the unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); and (ii) the professional fees and expenses incurred by the Debtors and any official committee appointed in the Debtors' Cases that are approved by the Court, in an aggregate amount of (b)(i) and (b)(ii) not to exceed \$425,000. Notice that the Carve-Out Expenses have been triggered shall be provided by the DIP Agent to counsel for the Debtors and lead counsel for any official committee appointed in the Debtors' Cases.</p> <p>No Budget shall include, and no Carve-Out Expenses may be incurred or be available for, any fees or expenses incurred by any party, including the Debtors, any official committee appointed in any of the Cases, or any of their professionals, in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings, contested matter, objection, other litigation, or discovery against the Existing First Lien Secured Parties, the Existing Second Lien Lenders, the DIP Lenders or their advisors, agents or subagents, including, without limitation, challenging the amount, validity, perfection, priority or enforceability of, or asserting any defense, counterclaim or offset to, the</p>

	<p>obligations arising under the DIP Facility and the Pre-petition Transaction Documents and the liens and claims thereunder in favor of the Existing First Lien Agent for the benefit of the Existing First Lien Secured Parties, the Existing Second Lien Agent for the benefit of the Existing Second Lien Lenders and the DIP Lenders; provided, however, that an aggregate amount not to exceed \$15,000 may be used by any official committee of creditors appointed in the Cases to investigate the foregoing.</p>
<p>Super-Priority Liens and Claims</p> <p>Interim Order ¶¶ 13 and 14</p> <p>DIP Credit Agreement § 2.6</p>	<p>Except as otherwise provided in the Orders, the Liens granted to the DIP Agent, for the benefit of the Secured Parties, shall have the senior secured status afforded by sections 364(c) and 364(d) of the Bankruptcy Code, all as more fully provided in the Orders.</p> <p>Except as otherwise provided in the Orders, the Post-petition Obligations shall constitute superpriority administrative expense claims in each of the Cases, as more fully provided in the Orders. Except as expressly set forth herein or in the Orders, no other claim having a priority superior or <u>pari passu</u> to that granted to the Post-petition Obligations shall be granted or approved.</p>
<p>Maturity Date</p> <p>DIP Credit Agreement § 3.1.1</p>	<p>The earliest of:</p> <p>(a) the first anniversary of the Petition Date;</p> <p>(b) the date that is thirty (30) days after the date on which an order confirming a plan of reorganization is entered by the Bankruptcy Court;</p> <p>(c) the effective date of a plan of reorganization for the Debtors;</p> <p>(d) the date on which any sale or transfer of a substantial portion of the DIP Collateral occurs;</p> <p>(e) the date that is sixty (60) days after the date the Interim Order is entered by the Bankruptcy Court, if the Final Order is not entered within such sixty (60) day period; and</p> <p>(f) the occurrence and continuation of any Event of Default and either (x) the declaration of all or any portion of the DIP Loans to be immediately due and payable or (y) the giving of notice by the DIP Agent, acting at the direction of the Required Lenders, to the Borrower that the Commitments have been terminated.</p>
<p>Interest Rate</p> <p>DIP Credit Agreement § 3.2</p>	<p>The Borrower may elect that DIP Loans comprising a Borrowing accrue interest at a rate <u>per annum</u> equal to:</p> <p>(a) the Alternate Base Rate plus 6.75% or</p> <p>(b) the LIBOR Rate plus 8.00%.</p> <p>The LIBOR Rate has a floor of 2% per annum.</p> <p>Interest is payable on a monthly basis in arrears.</p>

<p>Default Rates</p> <p>DIP Credit Agreement § 3.2.2</p>	<p>During the continuance of any Event of Default, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such amounts at a rate <u>per annum</u> equal to, (a) in the case of DIP Loans, the rate that would otherwise be applicable to such DIP Loans <u>plus</u> 2.00% or (b) in the case of other monetary obligations, the rate that would otherwise be applicable to Base Rate Loans <u>plus</u> 2.00%.</p>
<p>Commitment and Other Fees</p> <p>DIP Credit Agreement § 3.3</p>	<p><u>Commitment Fee</u>: The Borrower shall pay a non-refundable fee to the DIP Agent for the ratable account of the DIP Lenders (other than, with respect to any payment of the Commitment Fee, any DIP Lender that is a Defaulting Lender on the Monthly Payment Date that such payment is due) on the daily average undrawn amount of the Commitment Amount (other than any portion thereof held by any such Defaulting Lender) at a rate equal to one percent (1.00%) <u>per annum</u>.</p> <p><u>Upfront Fee</u>: The Borrower shall pay to the DIP Agent, for the ratable benefit of the DIP Lenders, a non-refundable upfront fee equal to two and a half percent (2.50%) of the original aggregate Commitment Amount, which shall be earned and due and payable at the time of closing.</p> <p><u>Exit Fee</u>: The Borrower agrees to pay an exit fee to the DIP Agent, for the ratable benefit of the DIP Lenders (other than any DIP Lender with respect to which a Lender Default of the type described in clause (x) of the definition thereof has occurred and is continuing on the date that such exit fee is payable), in an amount equal to two percent (2.00%) of the original aggregate amount of the DIP Facility (other than any portion thereof held by such a Defaulting Lender that is not entitled to such exit fee) which shall be payable in cash on the earlier to occur of (i) the DIP Facility Termination Date, and (ii) the date on which the DIP Loans shall be paid in full.</p> <p><u>DIP Agent Fee</u>: The Borrower agrees to pay to the DIP Agent, for its own account, the fees in the amounts and on the dates set forth in the Administrative Agent Fee Letter.</p>
<p>Conditions Precedent and Subsequent to Borrowings</p> <p>DIP Credit Agreement § 5</p>	<p>Article 5 of the DIP Credit Agreement contains customary conditions precedent and subsequent for borrowings under debtor-in-possession credit facilities as more fully set forth therein.</p>
<p>Covenants</p> <p>DIP Credit Agreement § 7</p>	<p>Article 7 of the DIP Credit Agreement contains affirmative, negative, and financial reporting covenants, many of which are customized to this situation and others of which are customary for facilities of this nature. These covenants include, without limitation, financial and collateral</p>

	reporting requirements, maintenance of insurance and collateral, limitations on creation of new indebtedness, and use of loan proceeds. There are also covenants relating to the Budget. The initial Budget is attached to this Motion as <u>Exhibit B</u> .
Events of Default DIP Credit Agreement § 8	<p>Article 8 of the DIP Credit Agreement contains Events of Default, many of which are customary for facilities of this nature. They include, without limitation:</p> <ul style="list-style-type: none"> (i) failure of the Debtors to pay principal when due or interest or fees when due and such Default continues unremedied for a period of three (3) days; (ii) a default under any DIP Loan Document that remains unremedied for a period of fifteen (15) days; (iii) materially incorrect representations, warranties, or certifications; (iv) the dismissal of any Case, or the conversion of any Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal or conversion of any Case; (v) the entry of an order under section 506(c) of the Bankruptcy Code surcharging the DIP Collateral or the Pre-petition Collateral; (vi) the appointment of an interim or permanent trustee in any Case or the appointment of a receiver, responsible officer or an examiner in any Case with enlarged powers beyond the duty to investigate and report, as set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code; (vii) the entry of an order in any of the Cases granting any other superpriority administrative claim or Lien equal or superior to that granted to the DIP Agent, on behalf of itself and the DIP Lenders, or to the Pre-Petition First Lien Agent, on behalf of the Pre-Petition First Lien Secured Parties (other than as expressly provided in the Order), or any Debtor shall file any pleading requesting such relief; (viii) the termination or modification of the Debtors' exclusivity as to the proposal of any plan of reorganization; and (xi) without the consent of the DIP Agent, the sale of all or substantially all of any Debtor's assets (either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in any Case, or otherwise) that does not provide for payment in full of the Post-petition Obligations and termination of the DIP Lenders' commitment to make DIP Loans.

<p>Events of Default Related to Plan, Disclosure Statement, and Confirmation Deadlines</p> <p>DIP Credit Agreement § 8.1.13</p>	<p>The failure of any of the following milestones to occur shall be an Event of Default: (a) the Debtors shall file the Plan of Reorganization no later than seven (7) days after the Petition Date; (b) the Debtors shall file the Disclosure Statement no later than twenty-one (21) days after the date of filing of the Plan of Reorganization; (c) the Bankruptcy Court shall have entered an order approving the Disclosure Statement no later than forty (40) days after the date of filing of the Disclosure Statement; (d) the Bankruptcy Court shall have commenced the confirmation hearing with respect to the Plan of Reorganization no later than forty (40) days after the date of an order approving the Disclosure Statement; and (e) the Bankruptcy Court shall have entered an order confirming the Plan of Reorganization by June 15, 2011.</p>
<p>Surcharge Waivers</p> <p>Interim Order ¶ 18(c)</p> <p>DIP Credit Agreement §§ 1.1 and 8.1.9</p>	<p>Subject to and effective only upon entry of the Final Order, no expenses of administration of any of the Cases or any Successor Case (as defined below), shall be charged against or recovered from the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lenders, the Existing First Lien Secured Parties, or Existing Second Lien Lenders, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lenders, the Existing First Lien Secured Parties, or the Existing Second Lien Lenders.</p>
<p>Modification of Automatic Stay</p> <p>Interim Order ¶ 26(a)</p> <p>DIP Credit Agreement § 8.2</p>	<p>The automatic stay provisions of section 362 of the Bankruptcy Code shall be 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 defined in the DIP Facility), all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions: (a) terminate the Debtors' use of Cash Collateral and cease to make any loans or advances to the Debtors other than with respect to Carve-Out Expenses to the extent permitted by the DIP Loan Documents; (b) declare all Post-petition Obligations to be immediately due and payable; (c) terminate any unfunded commitments under the proposed DIP Facility other than with respect to Carve-Out Expenses to the extent permitted by the DIP Loan Documents; (d) set off and apply immediately any and all amounts in accounts maintained by the Debtors with the DIP Lenders against the Post-petition Obligations, and otherwise enforce rights against the DIP Collateral in the possession of the DIP Lenders for application towards the Post-petition Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Order, the other DIP Loan Documents or applicable law to effect the repayment and satisfaction of the Post-petition Obligations; <u>provided, however</u>, that the DIP Lenders shall provide five (5) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to any official committee appointed in any of the Cases of such Event of Default prior to exercising any enforcement rights or remedies in respect of the DIP Collateral (other than the rights described in clauses (a), (b), and (c))</p>

	above (to the extent they might be deemed remedies in respect of the DIP Collateral) and other than with respect to freezing any deposit accounts or securities accounts); <u>provided further</u> , that the Debtors shall have the right to seek continuation of the automatic stay during such five (5) business days period.
Grant of Liens and Claims; Collateral Interim Order ¶¶ 13 and 14 DIP Credit Agreement § 10.1	Pursuant to Bankruptcy Code Section 364(c)(1), the DIP Agent and the DIP Lenders shall be granted a superpriority administrative claim over any and all administrative claims of the type specified in Bankruptcy Code Sections 503(b) and 507(b). As collateral for the DIP Loans and security for the full and timely payment and performance of all Post-petition Obligations when due (whether at stated maturity, by acceleration or otherwise), the DIP Agent, for the benefit of the DIP Lenders, is hereby granted (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first priority Lien on all assets of the Debtors that are unencumbered as of the commencement of the Cases (other than Avoidance Actions) and all proceeds therefrom; (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected Lien on all other assets of the Debtors (other than the assets referred to in the following clause (iii) and other than Avoidance Actions), junior only to the valid, perfected and non-avoidable Liens on such assets as of the Petition Date and to valid Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code and all proceeds therefrom; (iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, a perfected senior priming Lien on all of the Debtors' assets that are subject to the Liens of (A) the Pre-petition First Lien Agent and the Existing First Lien Secured Parties under the Prepetition First Lien Credit Agreement and (B) the Pre-petition Second Lien Agent and the Existing Second Lien Lenders under the Pre-petition Second Lien Credit Agreement, subject only to any valid, perfected and non-avoidable Liens held by parties other than the Existing First Lien Secured Parties and the Existing Second Lien Lenders; and (iv) subject to any valid pre-petition Liens other than Liens granted under the Existing First Lien Transaction Documents and the Pre-petition Second Lien Transaction Documents, pursuant to Sections 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 503(b) of the Bankruptcy Code, a claim and Liens on any pre-petition and post-petition improvements.
Perfection of Liens Without Compliance with Applicable Laws Interim Order ¶ 18(a) DIP Credit	The Post-petition Liens, First Lien Lenders' Adequate Protection Liens (as defined below), and Second Lien Lenders' Adequate Protection Liens (as defined below) shall be deemed valid and perfected by entry of the Interim Order and, when applicable, the Final Order. The DIP Agent, the Existing First Lien Secured Parties and the Existing Second Lien Lenders shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Post-petition Liens, First Lien Lenders' Adequate Protection Liens (as defined below),

Agreement § 10.2	or Second Lien Lenders' Adequate Protection Liens (as defined below).
Adequate Protection for Existing First Lien Secured Parties Interim Order ¶ 16 DIP Credit Agreement § 10.3	Adequate protection for the Existing First Lien Secured Parties shall consist of: liens on all DIP Collateral, allowed, super-priority claims under section 507(b) of the Bankruptcy Code against the Debtors' estate, reimbursement of all reasonable and documented fees and expenses incurred by professionals for the Existing First Lien Agent, rights to terminate their consent to the Debtors' use of Cash Collateral, and, upon entry of the Final Order, certain credit bidding rights.
Adequate Protection for Existing Second Lien Lenders Interim Order ¶ 17	Adequate protection for the Existing Second Lien Lenders shall consist of: (a) liens on all DIP Collateral and allowed, super-priority claims under section 507(b) of the Bankruptcy Code against the Debtors' estate, junior in all respects to the Post-petition Obligations, all liens, claims and protections granted the DIP Lenders and Existing First Lien Secured Parties by the DIP Loan Documents, the Pre-petition First Lien Obligations and the First Lien Lenders' Pre-petition Liens, and, (b) upon entry of the Final Order, certain credit bidding rights.
Indemnification Provisions Interim Order ¶ 15 DIP Credit Agreement § 12.4	Except for gross negligence or willful misconduct, the Borrower indemnifies, exonerates and holds the DIP Agent and each DIP Lender, their Affiliates and each of their respective officers, directors, employees, advisors and agents free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages, and expenses incurred in connection therewith as a result of, or arising out of, or relating to, among other things, the DIP Facility, DIP Loans, and DIP Loan Documents.
Release and Challenge Period Interim Order ¶ 23 DIP Credit Agreement §§ 6.25 and 12.20	The Debtors provide the Existing First Lien Secured Parties and the Existing Second Lien Lenders with a release that shall be binding upon all other parties in interest, including, without limitation, any official committee of unsecured creditors appointed in any of the Cases, unless such official committee files a complaint pursuant to Bankruptcy Rule 7001 seeking to invalidate, subordinate or otherwise challenge the Pre-petition Liens or Pre-petition Obligations; <u>provided</u> , that any such complaint must be filed in this Court within seventy-five (75) days from the engagement of counsel for any official committee of unsecured creditors, or, if no counsel or no official committee of unsecured creditors is appointed, within ninety (90) days of the Petition Date.

Supplemental Bankruptcy Rule 4001 and Local Rule 4001-2 Disclosures

18. Delaware Local Rule 4001-2 requires the disclosure of certain provisions that are contained in post-petition financing motions and proposed orders or in the loan documents underlying those pleadings (collectively, the “Financing Motions”).

19. Cross-Collateralization: Local Rule 4001-2(a)(i)(A) requires the disclosure of provisions in Financing Motions that grant cross-collateralization protection. The DIP Loan Documents do not grant any cross-collateralization protection.

20. Investigation of Liens: Bankruptcy Rule 4001(c)(1)(B)(iii) and (viii) and Delaware Local Rule 4001-2(a)(i)(B) require the disclosure of findings of fact in Financing Motions that are intended to bind the estate with respect to the validity, amount, or perfection of liens or a waiver of claims, without first giving certain parties in interest an opportunity to conduct an investigation as to those facts or claims. The DIP Loan Documents contain findings of fact agreed to by the Debtors but provide for a 75-90 day challenge period on the part of any official committee of unsecured creditors appointed in any of the Cases to invalidate, subordinate or otherwise challenge the Pre-petition Liens or Pre-petition Obligations and further provide that up to \$15,000 of the DIP Facility and Cash Collateral may be used by any official committee of creditors appointed in the Cases to fund investigations to challenge the foregoing. *See* Interim Order ¶¶ 19 and 23; DIP Credit Agreement §§ 1.1 and 6.25.

21. Section 506(c) Surcharge Waiver: Bankruptcy Rule 4001(c)(1)(B)(x) and Delaware Local Rule 4001-2(a)(i)(C) require disclosure of provisions in Financing Motions that seek to waive, without notice, whatever rights the estate may have under section 506(c) of the Bankruptcy Code. Although the DIP Loan Documents and Final Order provide for a waiver of rights under section 506(c), such rights are not waived in the Interim Order. The proposed waiver of the Debtors and estates’ rights under section 506(c) will be effective only after notice

to parties in interest and entry of the Final Order granting such relief. *See* Interim Order ¶ 18(c), DIP Credit Agreement §§ 1.1 and 8.1.9.

22. Lien of Avoidance Actions: Bankruptcy Rule 4001(c)(1)(B)(xi) and Delaware Local Rule 4001-2(a)(i)(D) require disclosure of provisions in Financing Motions that grant the pre-petition secured creditor liens on Avoidance Actions. The DIP Loan Documents do not grant any liens on Avoidance Actions.

23. Roll-up of Pre-Petition Debt: Delaware Local Rule 4001-2(a)(i)(E) requires disclosure of provisions in Financing Motions whereby post-petition loans will be used to repay pre-petition debt. Under the DIP Loan Documents, the DIP Loans will not be used to repay pre-petition debt.

24. Carve-Out: Delaware Local Rule 4001-2(a)(i)(F) requires disclosure of provisions in Financing Motions that provide disparate treatment to professionals retained by the creditors' committee from professionals retained by the Debtors. The Carve-Out Expenses being paid pursuant to the DIP Loan Documents cover both the Debtors' and creditors' committee's professionals. No Budget shall include, and no Carve-Out Expenses may be incurred or be available for, any fees or expenses incurred by any party, including the Debtors, any official committee appointed in any of the Cases, or any of their professionals, in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings, contested matter, objection, other litigation, or discovery against the Existing First Lien Secured Parties, the Existing Second Lien Lenders, the DIP Lenders or their advisors, agents or subagents, including, without limitation, challenging the amount, validity, perfection, priority or enforceability of, or asserting any defense, counterclaim or offset to, the obligations arising under the DIP Facility and the Pre-petition Transaction Documents and the liens and claims thereunder in favor of the Existing First Lien Agent for the benefit of the Existing First Lien Secured Parties, Existing Second Lien Agent for the benefit of the Existing Second Lien Lenders

and the DIP Lenders; provided, however, that an aggregate amount not to exceed \$15,000 may be used by any official committee of creditors appointed in the Cases to investigate the foregoing. *See* Interim Order ¶ 18; DIP Credit Agreement § 1.1. Accordingly, all professionals retained by these estates will be treated equally with respect to the Carve-Out Expenses.

25. Priming Liens: Finally, Delaware Local Rule 4001-2(a)(i)(G) requires disclosure of provisions in Financing Motions that prime any secured liens without the consent of the lienholder. The Existing First Lien Secured Parties and Existing Second Lien Lenders are consenting to the Post-petition Liens priming their Pre-petition Liens in exchange for the liens, claims, and protections granted to them by the DIP Loan Documents. *See* Interim Order ¶ 6. The Post-petition Liens do not prime valid, perfected, non-avoidable and enforceable liens granted in favor of parties other than the Existing First Lien Secured Parties and Existing Second Lien Lenders and are junior to such liens. *See* Interim Order ¶ 13; DIP Credit Agreement §§ 2.6 and 10.1.

26. The provisions of the DIP Loan Documents as to which disclosure was required pursuant to Delaware Local Rule 4001-2 are justified under the circumstances of these Cases. First and foremost, without the inclusion of such terms, the DIP Lenders would not agree to make the DIP Facility available to the Debtors, and the Existing First Lien Secured Parties and Existing Second Lien Lenders would not agree to the Debtors' use of Cash Collateral or the priming of their Pre-petition Liens by the DIP Lenders. In light of the unavailability of adequate financing alternatives and for the reasons set forth more fully below, the Debtors determined in the exercise of their sound business judgment that agreeing to the disclosed provisions was appropriate under the circumstances of these Cases.

27. Accordingly, the facts and circumstances of these Cases justify the inclusion of the terms that require disclosure under Delaware Local Rule 4001-2.

Authorization to Use Cash Collateral

28. During the ordinary course of their operations and the sale of their products, the Debtors generate Cash Collateral. The Debtors need to use Cash Collateral in the normal course of their business in order to continue to finance their operations, make essential payments, such as funding employee payrolls and taxes, and to purchase goods. However, Cash Collateral is insufficient to fund the Debtors' ongoing funding requirements for the operation of their businesses in an orderly manner. Thus, the Debtors need to supplement their use of Cash Collateral with the funds being provided by the DIP Facility. As the DIP Facility is contingent upon the Debtors obtaining approval to use Cash Collateral, it is imperative that the Debtors obtain authority to use Cash Collateral subject to the terms of this Motion. Accordingly, in order to obtain the financing under the DIP Facility and to avoid immediate and irreparable harm to the Debtors' business operations and their estates, the Debtors have an immediate need for authority to use Cash Collateral.

Existing First Lien Secured Parties' Adequate Protection

29. The Existing First Lien Secured Parties are entitled, under sections 363(e) and 364(d)(1)(B) of the Bankruptcy Code, to adequate protection of their interest in the Pre-petition First Lien Collateral, including the Cash Collateral, for the aggregate diminution in the value of the Existing First Lien Secured Parties' interest in the Pre-petition Collateral, including the Cash Collateral, by reason of: (i) the imposition of the automatic stay under section 362 of the Bankruptcy Code; (ii) the priming of the First Lien Lenders' Pre-petition Liens; (iii) the use of the Existing First Lien Secured Parties' Cash Collateral; and (iv) the use, sale or lease of Pre-petition Collateral pursuant to section 363(a) of the Bankruptcy Code. Accordingly, the Debtors have agreed, subject to this Court's approval, to provide the Existing First Lien Secured Parties with the First Lien Lenders' Adequate Protection Obligations (as defined below) for the use of Cash Collateral and in return for their agreement to permit the priming of the First Lien Lenders'

Pre-petition Liens by the Post-petition Liens. Subject in all respects to the Post-petition Obligations, Post-petition Liens, and the rights of the DIP Lenders under the DIP Loan Documents (which shall at all times rank senior and prior to the Pre-petition Obligations, Pre-petition Liens, First Lien Lenders' Adequate Protection Obligations (as defined below), First Lien Lenders' Adequate Protection Liens (as defined below), and the First Line Lenders' Adequate Protection Claims (as defined below)), the First Lien Lenders' Adequate Protection Obligations consist of and are defined to mean the following:

- A. Adequate Protection Liens: Liens on all DIP Collateral (the “**First Lien Lenders' Adequate Protection Liens**”). Except as provided in the Orders, the First Lien Lenders' Adequate Protection Liens shall not be made subject to or pari passu with any Lien on the DIP Collateral by any order subsequently entered in any of the Cases or any conversion thereof to a case under chapter 7 of the Bankruptcy Code or any other proceeding related hereto (a “**Successor Case**”).
- B. Adequate Protection Administrative Claims: Allowed, super-priority claims under section 507(b) of the Bankruptcy Code against the Debtors' estate (the “**First Lien Lenders' Adequate Protection Claims**”). The First Lien Lenders' Adequate Protection Claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, whether incurred in any of the Cases or any Successor Case.
- C. Reimbursement of all reasonable and documented fees and expenses incurred by professionals for the Existing First Lien Agent including, without limitation, the reasonable disbursements of counsel and any financial consultant, advisor or expert advising the Existing First Lien Agent.
- D. The consent of the Existing First Lien Secured Parties to the use of the Pre-petition Collateral by the Debtors shall terminate upon: (a) the Debtors' failure to make any payment specified in this paragraph to or on behalf of the Existing First Lien Secured Parties or to comply with their other obligations specified in this paragraph; (b) the occurrence of an Event of Default; or (c) the occurrence of the DIP Facility Termination Date; other than with respect to Post-Trigger Carve-Out Expenses to the extent permitted by the DIP Loan Documents.
- E. The Existing First Lien Agent and its experts and advisors shall be given access for purposes of monitoring the business of the Debtors and the value of the Pre-petition Collateral; and the Debtors shall provide the Existing First Lien Agent with any written financial information or

periodic reporting that is provided to, or required to be provided to, the DIP Agent.

- F. Subject to and effective only upon entry of the Final Order, the Debtors shall provide for the inclusion of credit bidding rights in favor of the Existing First Lien Secured Parties in connection with the sale of any of the Debtors' assets, whether conducted pursuant to Section 363 of the Bankruptcy Code, Section 1129(b) of the Bankruptcy Code, or otherwise.

Existing Second Lien Lenders' Adequate Protection

30. The Existing Second Lien Lenders are entitled, under sections 363(e) and 364(d)(1)(B) of the Bankruptcy Code, to adequate protection of their interest in the Pre-petition Second Lien Collateral, including the Cash Collateral, for the aggregate diminution in the value of the Existing Second Lien Lenders' interest in the Pre-petition Collateral, including the Cash Collateral, by reason of: (i) the imposition of the automatic stay under section 362 of the Bankruptcy Code; (ii) the priming of the Second Lien Lenders' Pre-petition Liens; (iii) the use of the Existing Second Lien Lenders' Cash Collateral; and (iv) the use, sale or lease of Pre-petition Collateral pursuant to section 363(a) of the Bankruptcy Code. Accordingly, the Debtors have agreed, subject to this Court's approval, to provide the Existing Second Lien Lenders with the Second Lien Lenders' Adequate Protection Obligations (as defined below) for the use of Cash Collateral and in return for their agreement to permit the priming of the Second Lien Lenders' Pre-petition Liens by the Post-petition Liens. Subject in all respects to (x) the Post-petition Obligations, Post-petition Liens, and the rights of the DIP Lenders under the DIP Loan Documents (which shall at all times rank senior and prior to the Pre-petition Obligations, Pre-petition Liens, First Lien Lenders' Adequate Protection Obligations, First Lien Lenders' Adequate Protection Liens, and the First Line Lenders' Adequate Protection Claims), (y) the First Lien Lenders' Adequate Protection Obligations, the First Lien Lenders' Adequate Protection Liens, and the First Lien Lenders' Adequate Protection Claims, and (z) the Pre-

petition First Lien Obligations and First Lien Lenders' Pre-petition Liens, the Second Lien

Lenders' Adequate Protection Obligations consist of and are defined to mean the following:

- A. Adequate Protection Liens: Liens on all DIP Collateral junior in all respects to the Post-petition Liens, First Lien Lenders' Adequate Protection Liens, and First Lien Lenders' Pre-petition Liens (the "**Second Lien Lenders' Adequate Protection Liens**"). Except as provided in the Orders, the Second Lien Lenders' Adequate Protection Liens shall not be made subject to or pari passu with any Lien on the DIP Collateral by any order subsequently entered in any of the Cases or any Successor Case.
- B. Adequate Protection Administrative Claims: Allowed, super-priority claims under section 507(b) of the Bankruptcy Code against the Debtors' estate junior in all respects to the First Lien Lenders' Adequate Protection Claims but otherwise with priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, whether incurred in any of the Cases or any Successor Case (the "**Second Lien Lenders' Adequate Protection Claims**").
- C. The Existing Second Lien Agent and its experts and advisors shall be given access for purposes of monitoring the business of the Debtors and the value of the Pre-petition Collateral; and the Debtors shall provide the Existing Second Lien Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the DIP Agent.
- D. Subject to and effective only upon entry of the Final Order, the Debtors shall provide for the inclusion of credit bidding rights in favor of the Existing Second Lien Lenders in connection with the sale of any of the Debtors' assets, whether conducted pursuant to Section 363 of the Bankruptcy Code, Section 1129(b) of the Bankruptcy Code, or otherwise.

Relief Requested

31. By this Motion, the Debtors request entry of the Interim Order and Final Order authorizing, among other things:

- A. the Debtors to use Cash Collateral;
- B. in the case of the Interim Order, the Debtors to borrow up to an aggregate principal amount of \$2.5 million under the terms and conditions of the DIP Loan Documents, or in the case of the Final Order, the Debtors to borrow up to an aggregate principal amount of \$5 million under the terms and conditions of the DIP Loan Documents;

- C. the Debtors to execute and enter into the DIP Credit Agreement and the other DIP Loan Documents and to perform such other and further acts as may be required by the DIP Loan Documents;
- D. the Debtors to grant liens and security interests in substantially all of the Debtors' assets in favor of the DIP Agent and the DIP Lenders (including property that currently constitutes Pre-petition Collateral) and all proceeds thereof, to secure any and all of the Post-petition Obligations;
- E. the Debtors to provide the First Lien Lenders' Adequate Protection Obligations as specified herein in favor of the Existing First Lien Secured Parties in connection with the Debtors use of Cash Collateral in which the Existing First Lien Secured Parties have an interest, and the aggregate diminution in the value of the Existing First Lien Secured Parties' interest in the Pre-petition Collateral;
- F. the Debtors to provide the Second Lien Lenders' Adequate Protection Obligations as specified herein in favor of the Existing Second Lien Lenders in connection with the Debtors use of Cash Collateral in which the Existing Second Lien Lenders have an interest, and the aggregate diminution in the value of the Existing Second Lien Lenders' interest in the Pre-petition Collateral;
- G. certain stipulations by the Debtors with respect to the Pre-petition Transaction Documents and the Pre-petition Liens;
- H. the modification of the automatic stay;
- I. pursuant to Bankruptcy Rule 4001, that an interim hearing on the Motion be held before the Court to consider entry of the Interim Order;
- J. subject to and only effective upon the entry of the Final Order granting such relief, the limitation of the Debtors' right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and
- K. the scheduling of the Final Hearing within 45 days of the entry of the Interim Order and notice with respect thereto in accordance with Rule 4001(c)(2) of the Bankruptcy Rules.

Basis for Relief Requested

32. For the following reasons, the Debtors respectfully submit that they have satisfied the standards applicable for the use of Cash Collateral and Court approval of the DIP Facility.

Use of Cash Collateral

33. Section 363 of the Bankruptcy Code governs the Debtors' use of property of the estates.⁴ Section 363(c)(1) of the Bankruptcy Code provides that:

If the business of the debtor is authorized to be operated under Section ... 1108 ... of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c)(1).

34. Section 363(c)(2) of the Bankruptcy Code, however, provides an exception with respect to "cash collateral" to the general grant of authority to use property of the estate in the ordinary course set forth in section 363 of the Bankruptcy Code. Specifically, a trustee or debtor-in-possession may not use, sell, or lease "cash collateral" under subsection (c)(1) unless:

- (A) each entity that has an interest in such 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. 11 U.S.C. § 363(c)(2).

35. In this case, the Existing First Lien Secured Parties and the Existing Second Lien Lenders have consented to the use of Cash Collateral in exchange for the liens, claims and protections granted to them by the DIP Loan Documents. Therefore, the Debtors are authorized to use the Cash Collateral pursuant to Section 363(c)(2) of the Bankruptcy Code.

36. Moreover, the Debtors submit that the First Lien Lenders' Adequate Protection Obligations to be provided to the Existing First Lien Secured Parties and the Second Lien Lenders' Adequate Protection Obligations to be provided to the Existing Second Lien Lenders are appropriate. Section 363(e) of the Bankruptcy Code provides as follows:

⁴ Pursuant to Section 1107 of the Bankruptcy Code, a debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with section 363 of the Bankruptcy Code. *See* 11 U.S.C. § 1107(a).

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used ... by the [debtor in possession], the court, with or without a hearing, shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e)

37. The concept of adequate protection finds its basis in the Fifth Amendment's protection of property interests. H.R. Rep. No. 595, 95th Cong., 1st Sess. 338-40 (1977), reprinted in U.S. Code Cong & Admin. News 1978, pp. 5963. Adequate protection is also grounded in the belief that secured creditors should not be deprived of the benefit of their bargain. *Id.*

38. The Bankruptcy Code does not define adequate protection, but section 361 does list three non-exclusive examples of adequate protection. First, making a cash payment or periodic cash payments to the extent necessary to compensate for any decrease in value of the party's interest in property may constitute adequate protection. *See* 11 U.S.C. § 361(1). Second, providing additional or replacement liens to the extent necessary to compensate for any decrease in value of the interest of the property may suffice. *See* 11 U.S.C. § 361(2). Third, “granting such other relief ... as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property” may also suffice. *See* 11 U.S.C. § 361(3).

39. As adequate protection under sections 363(e) and 361(1)-(3), the Debtors have agreed to provide the Existing First Lien Secured Parties with the First Lien Lenders’ Adequate Protection, including the First Lien Lenders’ Adequate Protection Liens and First Lien Lenders’ Adequate Protection Claims, and the Existing Second Lien Lenders with the Second Lien Lenders’ Adequate Protection, including the Second Lien Lenders’ Adequate Protection Liens and Second Lien Lenders’ Adequate Protection Claims.

40. Additionally, as noted above, the DIP Lenders’ obligations to lend under the DIP Facility are conditioned on the Debtors receiving authority to use Cash Collateral. Hence, absent

such authority, the Debtors would not have access to any additional liquidity, which would imperil their ability to reorganize.

41. Therefore, the Debtors request that this Court authorize them to use Cash Collateral on an interim and (after a final hearing) final basis.

Post-petition Financing

42. The Debtors propose to obtain post-petition financing under the DIP Facility by providing security interests and liens as set forth above pursuant to sections 364(c) and (d) of the Bankruptcy Code. The statutory requirement for obtaining post-petition credit under section 364(c) is a finding, made after notice and hearing, that the debtors are “unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code].” 11 U.S.C. § 364(c). Indeed, section 364(c) financing is appropriate when the debtor-in-possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(e)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

43. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- a. the debtor is unable to obtain unsecured credit under Section 364(b), i.e., by allowing a lender only an administrative claim;
- b. the credit transaction is necessary to preserve the assets of the estate; and
- c. the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender. *In re Ames Dep’t Stores*, 115 B.R. at 37-39.

44. Pre-petition, the Debtors endeavored to identify potential sources of post-petition financing. Based on discussions with potential lenders, the Debtors have determined that adequate post-petition financing on an unsecured basis or on a junior priority basis to the Existing First Lien Secured Parties and the Existing Second Lien Lenders is not available. Without post-petition financing, the Debtors would be unable to operate their businesses as a going concern, which would significantly impair the value of the Debtors' assets to the detriment of all creditor constituencies. Furthermore, by obtaining post-petition financing, the Debtors will be in a position to preserve the value of their assets for the benefit of all creditors. Finally, the terms of the DIP Facility are fair, reasonable and adequate given the Debtors' circumstances, all as more fully set forth below.

Approval of Priming Liens and Adequate Protection under Section 364(d)

45. If a debtor is unable to obtain credit under the provisions of Section 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a "priming lien." 11 U.S.C. § 364(d). Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of post-petition debt secured by senior or "priming" liens, provides that the court may, after notice and a hearing, authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if

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

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

11 U.S.C. § 364(d); *In re Levitt & Sons, LLC*, --- B.R. ----, 2008 WL 413979, at *9 (Bankr. S.D.Fla. Feb. 13, 2008) ("In the event the debtor is unable to obtain credit under the provisions of § 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a "priming lien.").

46. A debtor has the burden of establishing that the holder of a lien to be subordinated, or whose cash collateral will be used, has adequate protection. *See In re Swedeland Devel. Co.*, 16 F.3d 552, 564 (3d Cir. 1994). The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. *See In re Mosello*, 195 B.R. 277, 288 (Bankr. S.D.N.Y. 1996). “Its application 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.” *Id.* (quoting *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)).

47. In accordance with Section 364(d) of the Bankruptcy Code, and consistent with the purposes underlying the provision of adequate protection, the proposed Interim Order provides the Existing First Lien Secured Parties with adequate protection, including the First Lien Lenders’ Adequate Protection Liens and First Lien Lenders’ Adequate Protection Claims, and the Existing Second Lien Lenders with adequate protection, including the Second Lien Lenders’ Adequate Protection Liens and Second Lien Lenders’ Adequate Protection Claims.

48. Moreover, a “priming” lien may be granted with the consent of the secured creditors whose lien will be primed. *See In re Sun Healthcare Group, Inc.*, 245 B.R. 779, 782 n.5 (Bankr. D.Del. 2000) (“Their consent (to the use of their cash collateral and priming of their liens) was given in exchange for . . . adequate protection”); *In re El Paso Refinery, L P.*, 171 F.3d 249, 252 (5th Cir. 1999) (noting that “El Paso gave BBL a priming lien, which by agreement was given a priority over the preexisting first lien of a group of Term Lenders”); *In re Outboard Marine Corp.*, 2002 WL 571661, at *1 (Bankr. N.D.Ill. Jan. 9, 2002) (“the DIP Lenders committed to provide certain financing to the Debtors . . . pursuant to which the Pre-petition Lenders consented to the imposition of priming liens upon the Pre-petition Collateral and in favor of the DIP Lenders”), *aff’d*, *Bank of America, N.A. v. Moglia*, 330 F.3d 942 (7th Cir. 2003).

49. The Existing First Lien Secured Parties and the Existing Second Lien Lenders have consented, provided that the relief requested herein is granted, to the priming of their Pre-petition Liens.

50. Accordingly, this Court should authorize the Debtors to grant priming liens to the DIP Lenders to secure the Debtors' Post-petition Obligations under the DIP Facility.

No Adequate Alternative to the DIP Facility is Currently Available

51. A debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code. *See In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986); *See also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

52. Substantially all of the Debtors' assets are subject to the Pre-petition Liens asserted by the Existing First Lien Secured Parties and the Existing Second Lien Lenders. Because of the substantial amount of Pre-petition Obligations, obtaining the financing needed by the Debtors as unsecured debt or debt secured by liens junior to the Pre-petition Liens was not a realistic option.

53. In the months prior to the commencement of these Cases, the Debtors instructed their proposed financial advisor to pursue alternative financing proposals, including post-petition financing, from a number of potential lenders and the Debtors' proposed financial advisor did in fact do so. Potential lenders contacted were not interested in providing an adequate stand alone debtor-in-possession financing facility unless the lenders would be able to prime the liens of the Existing First Lien Secured Parties and the Existing Second Lien Lenders.

54. Because the Existing First Lien Secured Parties and the Existing Second Lien Lenders would not consent to being primed by a third party lender and because the Debtors decided that it would be imprudent to attempt to prime the Existing First Lien Secured Parties and the Existing Second Lien Lenders on a contested basis in light of the risk involved (and the

more favorable terms of the DIP Facility), the Debtors determined that the proposed DIP Facility is the best financing option available to the Debtors under the circumstances.

55. Accordingly, the Debtors have satisfied the requirement of sections 364(c) and (d) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtors.

The DIP Facility Terms are Fair, Reasonable, and Appropriate

56. The proposed terms of the DIP Facility and DIP Loan Documents are fair, reasonable, and adequate under the circumstances. First and foremost, as discussed more fully above, the Debtors have made a concerted, good-faith effort to obtain credit on the most favorable terms available. Although the Debtors contacted various financial institutions, no other prospective lender was willing to provide an adequate stand alone financing facility on terms more favorable than those offered by the DIP Lenders unless the Existing First Lien Secured Parties and the Existing Second Lien Lenders consented to the priming of the Pre-petition Liens, which they would not do.

57. Against this backdrop, the Debtors and their proposed bankruptcy counsel and financial advisor carefully evaluated the proposed financing offered by the DIP Lenders and engaged in extensive arms' length negotiations with the DIP Lenders regarding the proposed terms and conditions of the DIP Facility. Eventually, the Debtors, in their sound business judgment, agreed to the DIP Facility as the proposal best suited to the Debtors' needs.

58. To further illustrate that the terms are fair, reasonable, and adequate, the proposed DIP Facility and DIP Loan Documents provide for payment of the Carve-Out Expenses. In *In re Ames Dep't Stores*, 115 B.R. 34 (Bankr. S.D.N.Y. 1990), the court found that such "carve-outs" are not only reasonable, but are necessary to ensure that official committees and the debtor's estate will be assured of the assistance of counsel. *Id.* at 40.

59. Likewise, the various fees and charges required by the DIP Lenders under the DIP Facility are customary and approval thereof is appropriate. Indeed, courts routinely authorize similar lender incentives beyond the explicit liens and other rights specified in section 364 of the Bankruptcy Code. *See, e.g., In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316 (9th Cir. BAP 1992) (authorizing credit arrangement under Section 364, including a lender “enhancement fee”).

60. Accordingly, the terms of the DIP Facility are fair, reasonable, and adequate, and the DIP Lenders under the DIP Facility should be accorded the benefits of Section 364(e) of the Bankruptcy Code in respect of such agreement.

The Automatic Stay Should be Modified on a Limited Basis

61. The relief requested herein contemplates a modification of the automatic stay pursuant to section 362 of the Bankruptcy Code to the extent necessary to permit the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default (as defined in the DIP Facility), all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions: (a) terminate the Debtors’ use of Cash Collateral and cease to make any loans or advances to the Debtors other than with respect to Carve-Out Expenses to the extent permitted by the DIP Loan Documents; (b) declare all Post-petition Obligations to be immediately due and payable; (c) terminate any unfunded commitments under the proposed DIP Facility other than with respect to Carve-Out Expenses to the extent permitted by the DIP Loan Documents; (d) set off and apply immediately any and all amounts in accounts maintained by the Debtors with the DIP Lenders against the Post-petition Obligations, and otherwise enforce rights against the DIP Collateral in the possession of the DIP Lenders for application towards the Post-petition Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Order, the other DIP Loan Documents or applicable law to effect the repayment and satisfaction of the Post-petition Obligations; provided, however, that the DIP Lenders shall provide five (5) business days written notice (by facsimile, telecopy,

electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to any official committee appointed in any of the Cases of such Event of Default prior to exercising any enforcement rights or remedies in respect of the DIP Collateral (other than the rights described in clauses (a), (b), and (c) above (to the extent they might be deemed remedies in respect of the DIP Collateral) and other than with respect to freezing any deposit accounts or securities accounts); provided further, that the Debtors shall have the right to seek continuation of the automatic stay during such five (5) business days period.

Interim Approval Should Be Granted

62. Bankruptcy Rules 4001(b) and (c)(2) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 15 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Fed.R.Bankr.P. 4001(c)(2).

63. The Debtors request that the Court authorize the Debtors, on an interim basis pending the Final Hearing, to borrow under the DIP Facility in an amount up to \$2.5 million. This relief will enable the Debtors to operate their businesses in a manner that will permit them to preserve and maximize value and thereby avoid immediate and irreparable harm and prejudice to their estates and all parties in interest pending the Final Hearing.

64. Absent interim approval of the use of Cash Collateral and interim borrowing under the DIP Facility, the Debtors' businesses would suffer immediate and irreparable harm. Specifically, the Debtors would have no funds available to purchase goods and services necessary to continue their business operations. The Debtors would be unable to meet their payroll and other employee-benefit obligations, thereby threatening the livelihood of their employees.

65. The Debtors also believe that interim authority to use Cash Collateral and to borrow up to \$2.5 million is necessary for the Debtors to implement payments to their vendors that the Debtors believe are critical to their ability to obtain goods and services from their vendors.

66. The failure to obtain interim (and final) approval of the DIP Facility will also imperil the Debtors' going concern value and reorganization efforts.

67. Therefore, the Debtors seek interim approval of the use of Cash Collateral and interim borrowing under the DIP Facility in the amount of \$2.5 million. For the same reasons, the Debtors request that this Court waive any stay on the effectiveness of an Interim Order.

Final Hearing

68. The Debtors further respectfully request that this Court set a date and time for the Final Hearing to consider the entry of the Final Order approving the relief sought in the Motion, including, without limitation, final court approval of the Debtor's use of Cash Collateral and borrowing up to \$5 million under the DIP Facility.

Request for Immediate Relief and Waiver of Stay to Avoid Immediate and Irreparable Harm

69. To the extent that Bankruptcy Rule 6004(h) applies to the Debtors' requests for interim and final relief in this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise." For the reasons set forth above, the Debtors submit that cause exists to justify a waiver of the ten-day stay imposed by Bankruptcy Rule 6004(h).

Notice

70. Pursuant to Bankruptcy Rule 4001, notice of this Motion has been provided to (i) the Office of the United States Trustee for the District of Delaware, (ii) the Debtors' thirty (30) largest non-insider unsecured creditors on a consolidated basis, (iii) the agents for the Debtors' pre-petition and proposed post-petition lenders and their counsel, and (iv) the Internal Revenue Service. As this Motion is seeking first-day relief, notice hereof and of any order entered hereon will be served in accordance with Local Rule 9013-1(m)(iii) and (iv). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice of this Motion is required or necessary.

No Prior Request

71. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter an interim order, in the form attached hereto as Exhibit C, granting the relief requested herein and such other and further relief as this Court may deem necessary and proper.

Dated: January 26, 2011
Wilmington, Delaware

Respectfully submitted,

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Proposed Counsel for Summit Business
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and Debtors-in-Possession

EXHIBIT A

SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION
CREDIT AGREEMENT,

dated as of [_____] , 2011,

among

THE NATIONAL UNDERWRITER COMPANY,
as the Borrower, a Debtor and a Debtor-In-Possession,

the Guarantors listed herein,

VARIOUS FINANCIAL INSTITUTIONS,
as the Lenders,

and

BANK OF MONTREAL, CHICAGO BRANCH,
as the Administrative Agent.

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

THIS SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of [____], 2011, among THE NATIONAL UNDERWRITER COMPANY, an Ohio corporation and a debtor and debtor-in-possession under Chapter 11 of 11 U.S.C. §§ 101-1532 (as amended from time to time, the “**Bankruptcy Code**”) (the “**Borrower**”), the Guarantors, the various financial institutions as are or may become parties hereto (collectively, the “**Lenders**”) and BANK OF MONTREAL, CHICAGO BRANCH (“**BMO**”) as the administrative agent for the Lenders (in such capacity, the “**Administrative Agent**”).

W I T N E S S E T H:

WHEREAS, on [____], 2011 (the “**Petition Date**”), the Borrower and the Guarantors (each a “**Debtor**” and collectively, the “**Debtors**”) each filed a separate voluntary petition for relief (each a “**Case**” and collectively, the “**Cases**”) under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”); and

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

WHEREAS, Summit Business Media Holding Company, a Delaware corporation (“**Holdings**”), owns all of the Capital Stock of Summit Business Media Intermediate Holding Company, LLC, a Delaware limited liability company (“**Intermediate Holdings**”); and

WHEREAS, Intermediate Holdings owns all of the Capital Stock of the Borrower; and

WHEREAS, as of July 6, 2007, Intermediate Holdings, as the borrower, the lenders party thereto from time to time (the “**Prepetition First Lien Lenders**”), BMO, as the administrative agent (the “**Prepetition First Lien Agent**”), and the other agents entered into that certain Amended and Restated First Lien Credit Agreement which amended and restated that certain First Lien Credit Agreement dated as of November 3, 2006 (as amended, supplemented, amended and restated, or otherwise modified through the date hereof, the “**Prepetition First Lien Credit Agreement**”; the Prepetition Obligations thereunder, the “**Prepetition Loans**” and the collateral securing the Prepetition Loans, the “**Prepetition Collateral**”); and

WHEREAS, as of November 3, 2006, Intermediate Holdings, as the borrower, and the lenders party thereto from time to time (the “**Prepetition Second Lien Lenders**”) entered into that certain Second Lien Credit Agreement (as amended, supplemented, amended and restated, or otherwise modified through the date hereof, the “**Prepetition Second Lien Credit Agreement**”); and

WHEREAS, the Borrower and the Guarantors have requested that the Lenders provide post-petition financing to the Borrower in the form of a senior secured superpriority debtor-in-possession loan facility in the aggregate principal amount of \$5,000,000 (the “**DIP Facility**”),

pursuant to which Loans may be borrowed in amounts set forth in the Budget on the terms and conditions set forth herein; and

WHEREAS, the proceeds of the Loans will be advanced to the Borrower which will be used by the Debtors for operating and capital expenditures in accordance with the Budget to effectuate the restructuring as set forth in the Plan of Reorganization; and

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

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

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

“**Administrative Agent Fee Letter**” means the letter agreement, dated as of [____], 20__], between the Borrower and the Administrative Agent, as such letter agreement may thereafter from time to time be amended, supplemented, amended and restated or otherwise modified.

“**Affected Lender**” is defined in clause (a) of Section 4.11.

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

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

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

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

“Alternate Base Rate” means, on any date and relative to all Base Rate Loans, a fluctuating rate of interest per annum (rounded upward, if necessary, to the next highest 1/100 of 1%) equal to the higher of

- (a) the Base Rate in effect on such day; and
- (b) the Federal Funds Rate in effect on such day plus ½ of 1%.

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

“Applicable Base Rate Margin” means on any date, 6.75% per annum.

“Applicable LIBO Rate Margin” means on any date, 8.00% per annum.

“Approved Fund” means any Person (other than a natural Person) that (a) is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business, and (b) is administered or managed by a Lender (other than a Defaulting Lender), an Affiliate of a Lender (other than a Defaulting Lender) or a Person or an Affiliate of a Person that administers or manages a Lender (other than a Defaulting Lender).

“Asset Sale” is defined in Section 7.2.9.

“Assignee Lender” is defined in clause (a) of Section 12.11.

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

“Available Cash” means all of the Debtors’ cash (including all Cash Equivalent Investments and all Prepetition Cash Collateral).

“Avoidance Actions” means the Debtors’ respective claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 or 551 of the Bankruptcy Code, including any proceeds of, or property and interests, unencumbered or otherwise, recovered in respect of, any of the foregoing claims and causes of action.

“Bankruptcy Code” is defined in the preamble.

“Bankruptcy Court” is defined in the recitals.

“Base Rate” means, at any time, the rate of interest announced or otherwise established by the Administrative Agent from time to time as its prime commercial rate, or its equivalent, for U.S. Dollar loans to borrowers located in the United States as in effect on such day, with any

change in the Base Rate resulting from a change in said prime commercial rate to be effective as of the date of the relevant change in said prime commercial rate (it being acknowledged and agreed that such rate may not be the Administrative Agent's best or lowest rate).

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

"BMO" is defined in the preamble.

"Board of Directors" means, relative to any Person, (x) for so long such Person is a corporation, the Management Board or Board of Directors, as the case may be (as such terms are defined in the Organizational Documents of such Person) appointed pursuant to the Organizational Documents of such Person or (y) on and after such time as such Person is no longer a corporation, the substantially equivalent governing body of such Person.

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

"Borrower" is defined in the preamble.

"Borrowing" means the Loans of the same type and, in the case of LIBO Rate Loans, having the same Interest Period made by all Lenders pursuant to the same Borrowing Request in accordance with Section 2.3.

"Borrowing Request" means a request for Loans and certificate duly executed by an Authorized Representative of the Borrower, substantially in the form of Exhibit D, that states:

- (a) the date and amount of the proposed Borrowing;
- (b) the amount of Available Cash on the date of such Borrowing Request, and the estimated amount of Available Cash on the date of the proposed Borrowing;
- (c) that such Borrowing will be in compliance with Section 2.2; and
- (d) that no Default or Event of Default is continuing (or that the proceeds of the proposed Borrowing shall be used solely to pay Post-trigger Carve-out Expenses).

"Budget" means:

- (a) for the period commencing on the Petition Date and ending immediately prior to the delivery by the Borrower to the Administrative Agent of the first budget pursuant to, and in compliance with, Section 7.1.2(a), the budget attached to this Agreement as Exhibit B; and

(b) thereafter, the most recent budget delivered by the Borrower to the Administrative Agent pursuant to Section 7.1.2(a) that is in compliance with Section 7.1.2(a) (including in compliance with the requirement that such budget be satisfactory to the Administrative Agent).

The Budget for, during or with respect to, any period of thirteen (13) consecutive calendar weeks shall mean, for each of such weeks, the most recently delivered of the budgets described in clauses (a) and (b) above that covers such week.

“Business Day” means

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

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

“Capital Expenditures” means, for any period, expenditures for fixed or capital assets made during such period which, in accordance with GAAP, are classified as capital expenditures.

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

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

“Carve-out Exclusions” means any fees or expenses incurred by any party, including any Debtor or any official committee appointed in the Cases, or any Professionals, in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings, contested matter, objection, other litigation or discovery against any of the Prepetition First Lien Secured Parties, the Administrative Agent, the Lenders, or their advisors, agents or subagents, including, without limitation, challenging the amount, validity, perfection, priority or enforceability of, or asserting any defense, counterclaim or offset to, the Obligations, any Liens securing the Obligations, or any claims granted hereunder in favor of the Administrative Agent or the Lenders; provided, however, \$15,000 may be used by any official committee appointed in the Cases to investigate the Liens and claims with respect to the Prepetition First Lien Credit Agreement.

“Carve-out Expenses” means, collectively, (a) the Pre-trigger Carve-out Expenses, and (b) the Post-trigger Carve-out Expenses.

“Carve-out Trigger Notice” means a notice, delivered by the Administrative Agent to the Debtors’ lead counsel and to the lead counsel of any official committee appointed in the Cases, stating that (a) it is a “Carve-out Trigger Notice,” and (b) that an Event of Default has occurred (and specifying the relevant provision of Article VIII hereof under which such Event of Default occurred).

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

“Cash Equivalent Investment” means, at any time:

(a) any direct obligation of (or unconditionally guaranteed by) the United States or a State thereof (or any agency or political subdivision thereof, to the extent such obligations are supported by the full faith and credit of the United States or a State thereof) maturing not more than one year after such time;

(b) commercial paper maturing not more than 270 days from the date of issue, which is issued by

(i) a corporation (other than an Affiliate of any Debtor) organized under the laws of any State of the United States or of the District of Columbia and rated A 1 or higher by S&P or P 1 or higher by Moody’s, or

(ii) any Lender (or its holding company);

(c) any certificate of deposit, time deposit or bankers acceptance, maturing not more than one year after its date of issuance, which is issued by either

(i) any bank organized under the laws of the United States (or any State thereof) and which has (x) a credit rating of A2 or higher from Moody’s or A or higher from S&P and (y) a combined capital and surplus greater than \$500,000,000, or

(ii) any Lender;

(d) any repurchase agreement having a term of 30 days or less entered into with any Lender or any commercial banking institution satisfying the criteria set forth in clause (c)(i) which

(i) is secured by a fully perfected security interest in any obligation of the type described in clause (a), and

(ii) has a market value at the time such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such commercial banking institution thereunder; or

(e) any money market fund which has substantially all of its assets invested in the types of investments referred to in clauses (a) through (c) above.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

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

“Change of Control” means the failure of (i) Intermediate Holdings at any time to directly own beneficially and of record on a fully diluted basis 100% of the outstanding Capital Stock of the Borrower and (ii) Holdings at any time to directly own beneficially and of record on a fully diluted basis 100% of the outstanding Capital Stock of Intermediate Holdings, in each case, such Capital Stock to be held free and clear of all Liens (other than Liens granted under a Loan Document or a Prepetition Second Lien Loan Document).

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (x) the adoption or taking effect of any law, rule, regulation or treaty, (y) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Instrumentality or (z) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Instrumentality.

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

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

“Collateral” means collectively, the DIP Collateral and the Prepetition Collateral.

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

“Commitment Amount” means the aggregate principal amount of Loans which the Lenders are obligated to make pursuant to Section 2.1. As of the Closing Date, the Commitment Amount is \$5,000,000.

“Commitment Fee” is defined in Section 3.3.1.

“Commitment Termination Date” means the earliest of the following:

- (a) the DIP Facility Termination Date,
- (b) the date on which any Commitment Termination Event occurs, and
- (c) the date on which the Commitments are reduced to zero,

provided that, solely for purposes of Borrowings to be used solely to pay Post-trigger Carve-out Expenses, the Commitment Termination Date shall be the date 180 days after the date of delivery of a Carve-out Trigger Notice.

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

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

“Contingent Liability” means, relative to any Person, any agreement, undertaking or arrangement by which such Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the Indebtedness of any other Person (other than by endorsements of instruments in the course of collection or standard contractual indemnities entered into in the ordinary course of business), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person’s obligation under any Contingent Liability shall be deemed to be the outstanding principal amount of the debt obligation or other liability guaranteed thereby.

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

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

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

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

“Defaulting Lender” means any Lender with respect to which a Lender Default is in effect.

“DIP Collateral” is defined in clause (a) of Section 10.1.

“DIP Facility” is defined in the recitals.

“DIP Facility Termination Date” means the earliest of:

- (a) the first anniversary of the Petition Date;

- (b) the date that is thirty (30) days after the date on which an order confirming a plan of reorganization is entered by the Bankruptcy Court;
- (c) the effective date of a plan of reorganization for the Debtors;
- (d) the date on which any sale or transfer of a substantial portion of the DIP Collateral occurs;
- (e) the date that is sixty (60) days after the date the Interim Order is entered by the Bankruptcy Court, if the Final Order is not entered within such sixty (60) day period; and
- (f) the date on which any Commitment Termination Event occurs.

“Discharge Date” shall mean the date on which all Obligations (other than contingent and indemnification obligations in respect of which no claim has been made) shall have been paid in full in cash, all Commitments shall have been terminated and the Plan of Reorganization shall have become effective.

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

“Disclosure Statement” is defined in clause (b) of Section 8.1.13.

“Disposition” is defined in Section 2.1.3.

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

“Eligible Assignee” means (A) any of the following entities: (i) a commercial bank organized under the laws of the United States or any state thereof; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof (provided that (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country); and (iv) any other entity which is an “accredited investor” (as defined in Regulation D under the Securities Act) which extends credit or buys loans as one of its businesses including insurance companies, mutual funds, commercial finance companies and lease financing companies or (B) a Lender (other than a Defaulting Lender), an Affiliate of a Lender (other than a Defaulting Lender) or an Approved Fund; or (C) any other Person (other than a natural Person) that is approved by the Administrative Agent (and, so long as no Default shall be continuing, the Administrative Agent shall consult with the Borrower with respect to any proposed assignment to such Person that is proposed to be an Eligible Assignee pursuant to this clause (C)); provided, however, that neither the Prepetition Sponsor, the Debtors nor any of their Affiliates shall be an Eligible Assignee.

“Environmental Law” means any applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations and guidelines (including consent decrees and administrative orders) relating to public health and safety and protection of the environment.

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

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

“Event of Default” is defined in Section 8.1.

“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, (x) Taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or any other jurisdiction as a result of such recipient engaging in a trade or business or otherwise having a taxable presence in such jurisdiction for tax purposes, except to the extent resulting from the execution, delivery, or enforcement, or otherwise with respect to, this Agreement or Loan document and (y) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“Exemption Certificate” is defined in Section 4.6.

“Exit Milestones” are defined in Section 8.1.13.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) 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 (i) 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, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“Final Order” means, collectively, the order or orders of the Bankruptcy Court entered in the Debtors’ Cases after a final hearing under Bankruptcy Rule 4001 which order or orders shall be in form and substance reasonably satisfactory to the Administrative Agent and the Debtors, and shall approve and authorize on a final basis (including the expiration of all appeals and extension periods) the DIP Facility and shall contain the provisions set forth in the Interim

Order, and shall prohibit the assertion of claims arising under Section 506(c) of the Bankruptcy Code against the Administrative Agent or any Lender.

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

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

“Fiscal Year” means any period of twelve consecutive calendar months ending on December 31; references to a Fiscal Year with a number corresponding to any calendar year (e.g., the “2009 Fiscal Year”) refer to the Fiscal Year ending on December 31 of such calendar year.

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

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is 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.

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

“GAAP” is defined in Section 1.4.

“Governmental Instrumentality” means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantors” means, collectively, Summit Business Media Holding Company, a Delaware corporation and a debtor and debtor-in-possession under the Bankruptcy Code; Summit Business Media Intermediate Holding Company, LLC, a Delaware limited liability company and a debtor and debtor-in-possession under the Bankruptcy Code; Research Holdings, LTD., a California corporation and a debtor and debtor-in-possession under the Bankruptcy Code; Futures Magazine, Inc., an Illinois corporation and a debtor and debtor-in-possession under the Bankruptcy Code; Judy Diamond Associates, Inc., a District of Columbia corporation and a debtor and debtor-in-possession under the Bankruptcy Code; Agent Media Corporation, a Florida corporation and a debtor and debtor-in-possession under the Bankruptcy Code; Mining INDABA, LLC, a Delaware limited liability company and a debtor and debtor-in-possession under the Bankruptcy Code; and NUCO Business Information, LLC, a Delaware limited liability company and a debtor and debtor-in-possession under the Bankruptcy Code (each a **“Guarantor”**).

“Harris” means Harris N.A.

“Hazardous Substances” means:

- (a) any “hazardous substance”, as defined by CERCLA;
- (b) any “hazardous waste”, as defined by the Resource Conservation and Recovery Act, as amended; or
- (c) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance (including any petroleum product) within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended.

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

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

“Holdings” is defined in the recitals.

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

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit (or reimbursement agreements in respect thereof), whether or not drawn, and banker’s acceptances issued for the account of such Person;
- (c) all Capitalized Lease Liabilities of such Person;
- (d) all other items which, in accordance with GAAP, would be required to be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Indebtedness is to be determined (other than accounts payable, accrued expenses and deferred revenues of the Debtors arising in the ordinary course of business, in each such case, to the extent set forth in the Budget);

- (e) net liabilities of such Person under all Hedging Liabilities;
- (f) whether or not so included as liabilities in accordance with GAAP, all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business which are not overdue for a period of more than 90 days or, if overdue for more than 90 days, as to which a dispute exists and adequate reserves in conformity with GAAP have been established on the books of such Person), and indebtedness secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on property owned or being acquired by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (g) obligations arising under Synthetic Leases; and
- (h) all Contingent Liabilities of such Person in respect of any of the foregoing.

The Indebtedness of any Person shall include the Indebtedness of any other Person (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such Person, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Liability" is defined in Section 12.4.

"Indemnified Parties" is defined in Section 12.4.

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

"Intercreditor Agreement" means that certain Amended and Restated Intercreditor Agreement, dated as of December 22, 2006, which amended and restated that certain Intercreditor Agreement dated as of November 3, 2006, as amended, supplemented, amended and restated, or otherwise modified through the date hereof, among Intermediate Holdings, as the borrower, certain Affiliates of Intermediate Holdings party thereto, the Prepetition First Lien Agent, the Prepetition Second Lien Agent and BMO, as the control agent.

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

corresponding date), provided, however, that if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day).

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

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

“Intermediate Holdings” is defined in the recitals.

“Investment” means, relative to any Person,

- (a) any loan, advance or extension of credit made by such Person to any other Person (including Affiliates);
- (b) any Contingent Liability of such Person;
- (c) any Capital Stock held by such Person in any other Person; and
- (d) any other item that is required to be classified as an investment on a balance sheet of such Person prepared in accordance with GAAP.

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

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

“Lender” is defined in the preamble and, in addition, shall include any Person that becomes a Lender pursuant to Section 12.11.

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

“Lender Default” means (x) a failure (that has not been cured) by a Lender to fund any portion of any Borrowing in breach of its obligations under this Agreement, or (y) a Lender having notified the Administrative Agent or the Borrower that it does not intend to comply with its obligations under Section 2.3 as a result of the appointment of a receiver or conservator with respect to such Lender or otherwise at the direction or request of any regulatory agency or authority.

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

- (a) any Hazardous Substances on, in, under or affecting all or any portion of any property of any Debtor, the groundwater thereunder, or any surrounding areas thereof to the extent caused by Releases from any Debtor or any of their properties;
- (b) any misrepresentation, inaccuracy or breach of any warranty, contained in Section 6.13;
- (c) any violation or claim of violation by any Debtor of any Environmental Laws; or
- (d) the imposition of any Lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Substances by any Debtor or in connection with any property owned or formerly owned by any Debtor.

“LIBO Rate” means, relative to any Interest Period for LIBO Rate Loans, the rate of interest equal to the average (rounded upwards, if necessary, to the nearest 1/100 of 1%) of the rates per annum at which Dollar deposits in immediately available funds are offered to the Administrative Agent’s LIBOR Office in the London interbank market as at or about 11:00 a.m. London, England time two (2) Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period, and in an amount approximately equal to the amount of the Administrative Agent’s LIBO Rate Loan and for a period approximately equal to such Interest Period.

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

“LIBO Rate (Reserve Adjusted)” means, relative to any Loan to be made, continued or maintained as, or converted into, a LIBO Rate Loan for any Interest Period, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined pursuant to the following

formula; provided, however, notwithstanding anything contained herein to the contrary, in no event shall the LIBO Rate (Reserve Adjusted) be less than 2.00%:

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

The LIBO Rate (Reserve Adjusted) for any Interest Period for LIBO Rate Loans will be determined by the Administrative Agent on the basis of the LIBOR Reserve Percentage in effect, and the applicable rates furnished to and received by the Administrative Agent from the Lenders, two (2) Business Days before the first day of such Interest Period.

“LIBOR Office” means the office of a Lender designated as its “LIBOR Office” on such Lender’s signature page attached hereto or in a Lender Assignment Agreement, or such other office designated from time to time by notice from such Lender to the Borrower and the Administrative Agent, whether or not outside the United States, which shall be making or maintaining the LIBO Rate Loans of such Lender.

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

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

“Line Item” means each of the individual line items set forth in the Budget.

“Loan” is defined in Section 2.1.1.

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

“Loan Parties” means the Borrower and the Guarantors.

“Macquarie” means Macquarie Capital (USA) Inc.

“Material Adverse Effect” means any material and adverse effect on (i) the business, assets, property or financial condition of the Borrower and the Guarantors, taken as a whole or

(ii) the validity or enforceability of the Loan Documents or the rights, remedies, options or benefits of the Administrative Agent and the Lenders thereunder; provided, however, that any such effect shall be deemed not to be a Material Adverse Effect to the extent that it is the result of the commencement and continuation of the Cases.

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

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

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

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

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Disposition Proceeds” is defined in Section 2.1.3.

“Non-Defaulting Lender” means each Lender other than a “Defaulting Lender”.

“Non-Excluded Taxes” means any Taxes other than Excluded Taxes.

“Non-U.S. Lender” means any Lender that is not a “United States person”, as defined under Section 7701(a)(30) of the Code.

“Obligations” means (x) all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Debtors under this Agreement to any Lender of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of any of the Loan Documents, including all interest, fees, charges, reasonable out-of-pocket and documented expenses, reasonable out-of-pocket and documented attorneys’ fees and costs and expenses and reasonable out-of-pocket and documented consultants’ fees and reasonable accountants’ fees chargeable to the Debtors in connection with such Person’s dealings with the Debtors, and payable by the Debtors hereunder or thereunder; (y) any and all sums advanced by the Lenders in order to complete or preserve the DIP Collateral or preserve any Secured Party’s security interest in the DIP Collateral, including all protective advances; and (z) in the event of any proceeding for the collection or enforcement of, or any “working out” of, the Obligations after an Event of Default shall have occurred and be continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the DIP Collateral, or of any exercise by any Secured Party of its rights under the Loan Documents, together with reasonable attorneys’ fees and costs and expenses.

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

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

“Other Taxes” means any and all present or future stamp, documentary or similar Taxes, or any other excise or property Taxes, charges or similar levies that arise on account of any payment made or required to be made under any Loan Document or from the execution, delivery, registration, recording or enforcement of, or otherwise with respect to, any Loan Document.

“Participant” is defined in clause (e) of Section 12.11.

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

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

“Percentage” means, relative to any Lender, the applicable percentage relating to such Lender’s portion of the Commitment Amount as set forth on such Lender’s signature page attached hereto or as set forth in a Lender Assignment Agreement under the applicable column heading, in each case, as such percentage may be adjusted from time to time pursuant to Lender Assignment Agreement(s) executed by such Lender and its Assignee Lender(s) and delivered pursuant to Section 12.11.

“Permitted Lien” means any of the following types of Liens (excluding, however, any such Lien imposed pursuant to Section 430(k) of the Code or pursuant to Section 303(k) of ERISA and any such Lien expressly prohibited by any applicable terms of any of the Loan Documents):

(a) Liens securing payment of the obligations and Indebtedness permitted under subsection (ii) of Section 7.2.2;

(b) Liens securing payment of the obligations and Indebtedness permitted under subsection (iii) of Section 7.2.2 (subject to the Intercreditor Agreement);

(c) Liens set forth in Item 7.2.3 of the Disclosure Schedule;

(d) Liens in favor of carriers, warehousemen, mechanics, materialmen and landlords granted in the ordinary course of business for amounts not overdue or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(e) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (excluding, however, obligations for the payment of borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(f) judgment Liens in existence for less than 45 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by insurance maintained with responsible insurance companies and which do not otherwise result in an Event of Default under Section 8.1.6;

(g) easements, rights-of-way, zoning restrictions, minor defects or irregularities in title and other similar encumbrances not interfering in any material respect with the value or use of the property to which such Lien is attached;

(h) Liens for Taxes not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books;

(i) purported Liens evidenced by the filing of precautionary UCC financing statements related solely to operating leases of personal property entered into in the ordinary course of business; and

(j) customary rights of set-off, revocation, refund or charge back under deposit agreements or under the UCC of banks or other financial institutions.

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

“Petition Date” is defined in the recitals.

“Plan of Reorganization” means the Debtors' plan of reorganization in form and substance satisfactory to the Administrative Agent.

“Post-trigger Carve-out Expenses” means, collectively, the following:

(a) fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) that are not Pre-trigger Carve-out Expenses, and

(b) fees and expenses of Professionals, to the extent that (i) such fees and expenses were incurred on or after the date of delivery of a Carve-out Trigger Notice, (ii) such fees and expenses have been approved by the Bankruptcy Court, and (iii) such fees and expenses are not Carve-out Exclusions;

provided, that the aggregate amount of such fees and expenses described in clauses (a) and (b) above (not otherwise excluded pursuant to the foregoing clauses (b)(i), (b)(ii) and (b)(iii)) does not exceed \$425,000.

“Pre-trigger Carve-out Expenses” means, collectively, the following:

(a) fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a) that are due and unpaid on the date of delivery of a Carve-out Trigger Notice, and

(b) fees and expenses of Professionals, to the extent that (i) such fees and expenses were incurred prior to, and are unpaid on, the date of delivery of a Carve-out Trigger Notice, (ii) such fees and expenses have been approved by the Bankruptcy Court, (iii) such fees and expenses are included in, and are consistent with, the Budget, and (iv) such fees and expenses are not Carve-out Exclusions.

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

“Prepetition Cash Collateral” means the Prepetition First Lien Secured Parties’ cash collateral, as defined in Section 363(a) of the Bankruptcy Code.

“Prepetition Collateral” is defined in the recitals.

“Prepetition First Lien Agent” is defined in the recitals.

“Prepetition First Lien Credit Agreement” is defined in the recitals.

“Prepetition First Lien Lenders” is defined in the recitals.

“Prepetition First Lien Loan Documents” means “Loan Documents” as defined in the Prepetition First Lien Credit Agreement.

“Prepetition First Lien Secured Parties” means, collectively, each Secured Party as such term is defined in the Prepetition First Lien Credit Agreement.

“Prepetition Loans” is defined in the recitals.

“Prepetition Obligations” means “Obligations” as defined in the Prepetition First Lien Credit Agreement.

“Prepetition Second Lien Agent” means Ares Capital Corporation in its capacity as the administrative agent under the Prepetition Second Lien Credit Agreement.

“Prepetition Second Lien Credit Agreement” is defined in the recitals.

“Prepetition Second Lien Lenders” is defined in the recitals.

“Prepetition Second Lien Loan Documents” means “Loan Documents” as defined in the Prepetition Second Lien Credit Agreement.

“Prepetition Sponsor” means collectively, Wind Point Partners V, L.P., Wind Point Partners VI, L.P. and their respective Affiliates (but excluding any portfolio operating company owned by such Person).

“Professionals” means, collectively, any and all professional Persons, retained by one or more of the Debtors or the Committee.

“Reduction Date” is defined in Section 2.1.3.

“Register” is defined in Section 2.5.

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

“Released Parties” is defined in Section 12.20.

“Replacement Lender” is defined in clause (a) of Section 4.11.

“Replacement Notice” is defined in clause (a) of Section 4.11.

“Required Lenders” means, at any time,

(a) Non-Defaulting Lenders holding more than 50% of the sum of the aggregate outstanding principal amount of the Loans then held by such Non-Defaulting Lenders, or

(b) if there have been no Loans, Lenders having more than 50% of the Commitments.

“Restricted Payment” means (i) the declaration or payment of any dividend (other than dividends payable solely in Capital Stock of any Debtor) on, or the making of any payment or distribution on account of, or setting apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any class of Capital Stock of any Debtor or any warrants, options or other right or obligation to purchase or acquire any such Capital Stock, whether now or hereafter outstanding, (ii) the making of any other distribution in respect of such Capital Stock, in each case either directly or indirectly, whether in cash, property or obligations of any Debtor or otherwise or (iii) the payment by the Borrower of management fees or other payments to the Prepetition Sponsor or any other Person that owns Capital Stock of Holdings.

“Restructuring Agreement” means that certain Restructuring Support Agreement, dated as of January [], 2011, among the Debtors, the Supporting Creditors and the Additional Supporting Creditors referred to therein.

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

“Secured Party” means the Lenders and the Administrative Agent and, in each case, their respective successors, transferees and assigns.

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

“Synthetic Lease” means, as applied to any Person, any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) (a) that is not a capital lease in accordance with GAAP and (b) in respect of which the lessee retains or obtains ownership of the property so leased for federal income tax purposes, other than any such lease under which that Person is the lessor.

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

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

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

“Upfront Fee” is defined in Section 3.3.2.

“U.S. Trustee” means the United States Trustee for the District of Delaware.

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

“Weekly Cash Flow Variance Report” means, with respect to any Budget, a report, substantially in the form of Exhibit F, setting forth the following:

- (a) in reasonable detail, any variances between such Budget and, with respect to each of the items set forth in the Budget, the actual financial results with respect to such items through the last day of the week most recently ended, together with an explanation of such variances, and
- (b) the amount of Available Cash on the Friday of the week most recently ended.

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

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

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

SECTION 1.4 Accounting and Financial Determinations; Weekly Periods. Unless otherwise specified, (a) all accounting terms used herein or in any other Loan Document shall be interpreted, and all accounting determinations and computations hereunder or thereunder shall be made, in accordance with the generally accepted accounting principles (“GAAP”) applied in the United States in the preparation of the financial statements to be provided by the Debtors from time to time in accordance with Section 7.1.1, and (b) references to a “week” shall mean the seven-day period ending on a Friday.

ARTICLE II

COMMITMENTS, BUDGET COMPLIANCE AND BORROWING PROCEDURES

SECTION 2.1 Commitments. On the terms and subject to the conditions of this Agreement, each Lender severally agrees to make Loans pursuant to its Commitment, in each case as described in this Section 2.1. No Lender shall have any liability for the failure of another Lender to make its Commitment available or to advance such Lender’s Percentage of any Loans to be made to the Borrower.

SECTION 2.1.1 Loans and Commitments. On any Business Day occurring from and after the Closing Date but prior to the Commitment Termination Date, each Lender will make a term loan (a **“Loan”**) to the Borrower in an amount equal to such Lender’s Percentage of

the aggregate amount of the Borrowing to be made on such day. No amount paid or prepaid with respect to the Loans may be reborrowed.

SECTION 2.1.2 Lenders Not Permitted or Required to Make Loans. No Lender shall be permitted or required to:

- (a) make a Loan if, after giving effect thereto, the aggregate amount of Loans of such Lender would exceed the amount of such Lender's Commitment, or
- (b) make a Loan prior to the date of delivery of a Carve-out Trigger Notice if, after giving effect thereto, the aggregate principal amount of all Loans would exceed (i) the Commitment Amount, minus (ii) \$425,000, or
- (c) make a Loan on or after the date of delivery of a Carve-out Trigger Notice if, after giving effect thereto, the aggregate principal amount of all Loans would exceed the Commitment Amount.

SECTION 2.1.3 Reduction of the Commitments and Mandatory Prepayments.

- (a) The Borrower may, from time to time on any Business Day, voluntarily reduce the Commitment Amount, provided that (i) any such reduction shall require at least five (5) Business Day's prior notice to the Administrative Agent, (ii) each such reduction shall be permanent, and (iii) any such reduction shall be in a minimum amount equal to \$1,000,000.
- (b) Upon receipt by any Debtor of any Net Disposition Proceeds (the date of such receipt, the "**Reduction Date**"),
 - (i) the Commitment Amount shall, effective on the Reduction Date, be automatically reduced by an amount equal to the amount of such Net Disposition Proceeds, and
 - (ii) if, after giving effect to the automatic reduction of the Commitment Amount provided for in this Section 2.1.3(b), the aggregate outstanding principal amount of the Loans is greater than the Commitment Amount, the Borrower shall, on the Reduction Date, prepay Loans in an amount equal to the amount by which the aggregate outstanding principal amount of the Loans exceeds the Commitment Amount as so reduced.

For purposes of this Section 2.1.3, "**Net Disposition Proceeds**" shall mean the aggregate cash proceeds received by any Debtor from any sale, transfer, lease, contribution or other conveyance of any assets (including accounts receivable)(each, a "**Disposition**"), other than sales of inventory in the ordinary course of business, minus the sum of (i) all reasonable legal, investment banking, brokerage and accounting fees and expenses incurred in connection with such Disposition, (ii) all Taxes actually paid or estimated by any Debtor to be payable in cash within the next 12 months in connection with such Disposition, and (iii) payments made by any Debtor to retire Indebtedness (other than the Loans) where payment of such Indebtedness is required in connection with such

Disposition; provided that, if the amount of any estimated Taxes pursuant to clause (ii) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Disposition Proceeds.

(c) Each reduction in the Commitment Amount, and each prepayment of Loans, provided for in this Section 2.1.3 shall be applied to the respective Commitments and Loans of the Lenders ratably in accordance with their respective Percentages.

SECTION 2.2 Use of Available Cash and Proceeds of Loans; Compliance with Budget.
The Debtors shall:

(a) use Available Cash and proceeds of Loans solely to make (x) payments of Post-trigger Carve-out Expenses, and (y) expenditures provided for by the Budget, in the respective amounts and at the respective times set forth in the Budget, provided that, for any four (4) week period consisting of any week, together with its immediately preceding three weeks, the Debtors shall be permitted to make expenditures in excess of the amounts set forth in the Budget for such period if either:

(i) the Administrative Agent shall have consented thereto, or

(ii) both of the following conditions are satisfied,

(1) the aggregate amount of expenditures for any Line Item for such period does not exceed 110% of the amount set forth in the Budget for such Line Item for such period, and

(2) the aggregate amount of expenditures made during the period does not exceed 105% of the aggregate amount set forth in the Budget for expenditures to be made during such period;

(b) make Borrowings only to the extent provided for in the Budget (as expenditures set forth in the Budget may be increased in accordance with subsection (ii) of clause (a) of this Section);

(c) not make any Borrowing on any day if, after giving effect to such Borrowing and the use of the proceeds of such Borrowing, the amount of Available Cash would be greater than \$1,000,000;

(d) incur Indebtedness and other obligations only to the extent provided in the Budget (but the Debtors may in any event incur Indebtedness in respect of any Borrowings under this Agreement);

(e) not permit the ratio of the following (expressed as a percentage):

(i) the aggregate amount of cash received by the Debtors from their ordinary course business operations for any period of four (4) consecutive weeks, to

(ii) the aggregate amount of cash received by the Debtors (as set forth in the Budget) for such period,

to be less than or equal to 90%, without the consent of the Administrative Agent; and

(f) not use any Available Cash for any purpose (other than the payment of Carve-out Expenses) at any time after the acceleration of the maturity of the Loans pursuant to Article VIII;

provided that:

(x) nothing in this Section 2.2 or in Section 2.1 shall limit or modify the obligation of the Debtors to pay the Obligations when due,

(y) nothing in this Section 2.2 or in Section 2.1 constitutes a waiver by the Administrative Agent or any Lender of their respective rights to object to the fees and expenses of any Professional, all such rights being specifically reserved, and

(z) neither the proceeds of the Loans nor any Available Cash shall be available for the payment of any Carve-out Exclusions.

SECTION 2.3 Borrowing Procedure. On the terms and subject to the conditions of this Agreement, by delivering a Borrowing Request to the Administrative Agent on or before 12:00 noon, Chicago time, on a Business Day, the Borrower may from time to time irrevocably request, on not less than one (1) Business Day's notice in the case of Base Rate Loans, or three (3) Business Days' notice in the case of LIBO Rate Loans, and in either case not more than five (5) Business Days' notice for all Loans, that a Borrowing be made. On the terms and subject to the conditions of this Agreement, each Borrowing shall be comprised of the type of Loans, and shall be made on the Business Day specified in such Borrowing Request. On or before 2:00 p.m. (Chicago time) on such Business Day each Lender shall deposit with the Administrative Agent same day funds in an amount equal to such Lender's Percentage of the requested Borrowing. Such deposit will be made to an account which the Administrative Agent shall specify from time to time by notice to the Lenders. To the extent funds for Loans are received from the Lenders, the Administrative Agent shall make such funds available to the Borrower by wire transfer to the Harris account specified in the Borrowing Request.

SECTION 2.4 Continuation and Conversion Elections. By delivering a Continuation/Conversion Notice to the Administrative Agent on or before 12:00 noon, Chicago time, on a Business Day, the Borrower may from time to time irrevocably elect, on not less than three (3) Business Days' notice in the case of continuation of or conversion to LIBO Rate Loans, and not more than five (5) Business Days' notice for all Loans, that all, or any portion in an aggregate minimum amount of \$1,000,000 and an integral multiple of \$250,000, be, in the case of Base Rate Loans, converted into LIBO Rate Loans or be, in the case of LIBO Rate Loans, converted into Base Rate Loans or continued as LIBO Rate Loans (in the absence of delivery of a Continuation/Conversion Notice with respect to any LIBO Rate Loan at least three (3) Business Days (but not more than five (5) Business Days) before the last day of the then current Interest Period with respect thereto, but subject in all events to clause (y) in the proviso of this sentence, such LIBO Rate Loan shall, on such last day, automatically continue as a LIBO Rate

Loan having a one (1) month Interest Period); provided, however, that (x) each such conversion or continuation shall be pro rated among the applicable outstanding Loans of all Lenders and (y) no portion of the outstanding principal amount of any Loans may be continued as, or be converted into, LIBO Rate Loans when any Default has occurred and is continuing.

SECTION 2.5 Register. The Borrower hereby designates the Administrative Agent to serve as each Borrower's agent, solely for the purpose of this clause, to maintain a register (the "**Register**") on which the Administrative Agent will record each Lender's Commitment, the Loans made by each Lender and each repayment in respect of the principal amount of the Loans, annexed to which the Administrative Agent shall retain a copy of each Lender Assignment Agreement delivered to the Administrative Agent. Failure to make any recordation, or any error in such recordation, shall not affect any Debtor's Obligations. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person in whose name a Loan is registered as the owner thereof for the purposes of all Loan Documents, notwithstanding notice or any provision herein to the contrary. Any assignment or transfer of a Commitment or the Loans made pursuant hereto shall be registered in the Register only upon delivery to the Administrative Agent of a duly executed Lender Assignment Agreement. No assignment or transfer of a Lender's Commitment or Loans shall be effective unless such assignment or transfer shall have been recorded in the Register by the Administrative Agent as provided in this Section.

SECTION 2.6 Superpriority Nature of Obligations and Loans. (a) Except as otherwise provided in the Orders, the Liens granted to the Administrative Agent, for the benefit of the Secured Parties, shall have the senior secured status afforded by Sections 364(c) and 364(d) of the Bankruptcy Code, all as more fully provided in the Orders.

(b) Except as otherwise provided in the Orders, the Obligations shall constitute superpriority administrative expense claims in each of the Cases, as more fully provided in the Orders. Except as expressly set forth herein or in the Orders, no other claim having a priority superior or pari passu to that granted to the Obligations shall be granted or approved.

SECTION 2.7 No Discharge; Survival of Claims. (a) The Obligations hereunder shall not be discharged (and each Loan Party, pursuant to Section 1141(d)(4) of the Bankruptcy Code hereby waives any such discharge) by the entry of an order (i) confirming any plan of reorganization in any of the Cases unless paid in full in cash; (ii) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code or (iii) dismissing any of the Cases and (b) until the full and indefeasible payment of the Obligations (other than contingent and indemnification obligations for which no claim has been asserted), the superpriority administrative claim granted to the Obligations and all Liens granted to the Administrative Agent shall continue in full force and effect and maintain their priority as set forth in the Orders.

SECTION 2.8 Waiver of any Priming Rights. Other than as expressly provided for in the Orders, each Debtor hereby irrevocably waives any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Lien of equal or superior priority than the Liens securing the Obligations, or to approve or grant a claim of equal or superior priority to the Obligations.

ARTICLE III

REPAYMENTS, PREPAYMENTS, INTEREST AND FEES

SECTION 3.1 Repayments and Prepayments; Application.

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

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

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

(ii) all such voluntary partial prepayments shall be in an aggregate minimum amount of \$100,000 and an integral multiple of \$50,000.

Principal of Loans that is prepaid may not be reborrowed. On the date of any voluntary prepayment of principal of Loans, the Commitment Amount shall be automatically reduced by the amount of such prepayment.

(b) The entire outstanding principal balance of all Loans shall become immediately due and payable and the obligation of any Lender to make a Loan shall automatically terminate upon the DIP Facility Termination Date.

SECTION 3.1.2 Application.

(a) So long as no Event of Default has occurred and is continuing, each prepayment or repayment of the principal of the Loans shall be applied, to the extent of such prepayment or repayment, first, to the principal amount thereof being maintained as Base Rate Loans, and second, subject to the terms of Section 4.4, to the principal amount thereof being maintained as LIBO Rate Loans.

(b) After an Event of Default has occurred and so long as such Event of Default is continuing, all amounts received on account of the Obligations shall be applied by the Administrative Agent first, to the reasonable and documented out-of-pocket costs and expenses of the Administrative Agent in protecting and preserving the security interests of the Lenders under the Loan Documents, second, to the reasonable and documented out-of-pocket costs and expenses of the Administrative Agent in protecting and preserving the DIP Collateral, third, to the reasonable and documented out-of-pocket costs and expenses of the Administrative Agent in enforcing the rights of the Lenders under this Agreement and the other Loan Documents, fourth, to all other Obligations due under this Agreement and the other Loan Documents (other than principal and interest on the Loans), fifth, to accrued and unpaid interest on the Loans and sixth, ratably among the aggregate outstanding principal balance of the Loans.

SECTION 3.2 Interest Provisions. Interest on the outstanding principal amount of Loans shall accrue and be payable in accordance with this Section 3.2.

SECTION 3.2.1 Rates. Subject to (x) Section 2.3 and (y) clause (y) in the proviso in the last sentence of Section 2.4, pursuant to an appropriately delivered Borrowing Request or Continuation/Conversion Notice, the Borrower may elect that Loans comprising a Borrowing accrue interest at a rate per annum:

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

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

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

SECTION 3.2.2 Post-Default Rates. During the continuance of any Event of Default, the Borrower shall pay, but only to the extent permitted by law, interest (after as well as before judgment) on such amounts at a rate per annum equal to, (a) in the case of Loans, the rate that would otherwise be applicable to such Loans pursuant to Section 3.2.1 plus 2.00% or (b) in the case of other monetary obligations, the rate that would otherwise be applicable to Base Rate Loans pursuant to Section 3.2.1 plus 2.00%.

SECTION 3.2.3 Payment Dates. Interest accrued on each Loan shall be payable in arrears, without duplication:

(a) on the DIP Facility Termination Date therefor;

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

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

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

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

(f) on that portion of any Loan the DIP Facility Termination Date of which is accelerated pursuant to Section 9.2, immediately upon such acceleration.

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

SECTION 3.3 Fees. The Borrower agrees to pay the fees set forth in this Section 3.3. All such fees shall be non-refundable.

SECTION 3.3.1 Commitment Fee. From and after the Closing Date, the Borrower shall pay a non-refundable fee (the “**Commitment Fee**”) to the Administrative Agent for the ratable account of the Lenders (other than, with respect to any payment of the Commitment Fee, any Lender that is a Defaulting Lender on the Monthly Payment Date that such payment is due) on the daily average undrawn amount of the Commitment Amount (other than any portion thereof held by any such Defaulting Lender) at a rate equal to one percent (1.00%) per annum. Notwithstanding the foregoing, to the extent that any Lender is not entitled to a payment of the Commitment Fee hereunder because such Lender is a Defaulting Lender on the applicable Monthly Payment Date for such payment but, as of such date, had not been a Defaulting Lender for more than 15 consecutive days and such Lender is no longer a Defaulting Lender on or before the day that is 15 days after the date such Lender became a Defaulting Lender, the Borrower shall pay to such Lender its pro rata share of the Commitment Fee on the date Borrower is notified that such Lender is no longer a Defaulting Lender as though such Lender had not been a Defaulting Lender on such Monthly Payment Date. Except as provided in the prior sentence, the Commitment Fee shall be payable on each Monthly Payment Date and upon any termination of any Commitment, in each case, for the number of days elapsed over a 365-day year.

SECTION 3.3.2 Upfront Fee. The Borrower shall pay to the Administrative Agent, for the ratable benefit of the Lenders, a non-refundable upfront fee equal to two and a half percent (2.50%) of the original aggregate Commitment Amount (the “**Upfront Fee**”), which shall be earned and due and payable on the date hereof.

SECTION 3.3.3 Exit Fee. The Borrower agrees to pay an exit fee to the Administrative Agent, for the ratable benefit of the Lenders (other than any Lender with respect to which a Lender Default of the type described in clause (x) of the definition thereof has occurred and is continuing on the date that such exit fee is payable), in an amount equal to two percent (2.00%) of the original aggregate amount of the DIP Facility (other than any portion thereof held by such a Defaulting Lender that is not entitled to such exit fee) which shall be payable in cash on the earlier to occur of (i) the DIP Facility Termination Date, and (ii) the date on which the Loans shall be paid in full.

SECTION 3.3.4 Administrative Agent Fee. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees in the amounts and on the dates set forth in the Administrative Agent Fee Letter.

ARTICLE IV

CERTAIN LIBO RATE AND OTHER PROVISIONS

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

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

- (a) Dollar deposits in the relevant amount and for the relevant Interest Period are not available to the Administrative Agent in its relevant market; or
- (b) by reason of circumstances affecting the Administrative Agent's relevant market, adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBO Rate Loans,

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

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

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

- (a) any conversion or repayment or prepayment of the principal amount of any LIBO Rate Loans on a date other than the scheduled last day of the Interest Period applicable thereto, whether pursuant to Section 3.1 or otherwise;
- (b) any Loans not being made as LIBO Rate Loans in accordance with the Borrowing Request therefor; or
- (c) any Loans not being continued as, or converted into, LIBO Rate Loans in accordance with the Continuation/Conversion Notice therefor,

then, upon the written notice of such Lender to the Borrower (with a copy to the Administrative Agent), the Borrower shall, within five (5) days of their receipt thereof, pay directly to such Lender such amount as will (in the reasonable determination of such Lender) reimburse such Lender for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on the Borrower.

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

SECTION 4.6 Lender's Tax.

- (a) Any and all payments by or on account of any Debtor under each Loan Document shall be made without setoff, counterclaim or other defense, and free and clear of, and without deduction or withholding for or on account of, any Taxes, except to the extent that any such deduction or withholding is required by applicable law. In the event that any Taxes are imposed and required to be deducted or withheld from any payment to

be made by or on account of any Debtor to or on behalf of any Secured Party under any Loan Document, then:

(i) subject to clause (f) of this Section, if such Taxes are Non-Excluded Taxes, the amount of such payment shall be increased as may be necessary so that such payment is made, after the withholding or deduction for or on account of such Taxes, in an amount that is equal to the amount provided for in such Loan Document; and

(ii) the Borrower shall withhold the full amount of such Taxes from such payment (as increased pursuant to clause (a)(i) of this Section) and shall pay such amount to the Governmental Instrumentality imposing such Taxes in accordance with applicable law.

(b) In addition, the Borrower shall pay all Other Taxes in accordance with applicable law to the relevant Governmental Instrumentality imposing such Other Taxes.

(c) As promptly as practicable after the payment of any Taxes or Other Taxes, and in any event within forty five (45) days of any such payment being due, the Borrower shall furnish to the Administrative Agent a copy of an official receipt (or a certified copy thereof) evidencing the payment of such Taxes or Other Taxes. The Administrative Agent shall make copies thereof available to any Lender upon request therefor.

(d) Subject to clause (f) of this Section,

(i) the Borrower shall indemnify each Secured Party for any Non-Excluded Taxes levied, imposed or assessed on (and whether or not paid directly by) such Secured Party whether or not such Non-Excluded Taxes are correctly or legally asserted by the relevant Governmental Instrumentality. Promptly upon having knowledge that any such Non-Excluded Taxes have been levied, imposed or assessed, and promptly upon notice by any Secured Party, the Borrower shall pay such Non-Excluded Taxes directly to the relevant Governmental Instrumentality (provided, however, that no Secured Party shall be under any obligation to provide any such notice to the Borrower, and provided further, that such Secured Party shall deliver to Borrower upon making such demand, with a copy to the Administrative Agent, a certificate as to the amount of such payment or liability setting forth in reasonable detail the basis and calculation of such amounts). In addition, the Borrower shall indemnify each Secured Party for any incremental Taxes that may become payable by such Secured Party as a result of any failure of the Borrower to pay any Taxes when due to the appropriate Governmental Instrumentality or to deliver to the Administrative Agent, pursuant to clause (c) of this Section, documentation evidencing the payment of Taxes. Relative to indemnification for Non-Excluded Taxes actually paid by any Secured Party or the indemnification provided in the immediately preceding sentence, such indemnification shall be made within thirty (30) days after the date such Secured Party makes written demand therefor. The Borrower acknowledges that any payment made to any Secured Party or to any Governmental Instrumentality

in respect of the indemnification obligations of the Borrower pursuant to this clause shall constitute a payment in respect of which the provisions of clause (a) of this Section and this clause shall apply. The indemnity provided for herein shall survive the payment of the Obligations and termination of this Agreement.

(ii) Each Lender shall indemnify the Borrower and the Administrative Agent to the extent of its Commitment against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and reasonable expenses (including the fees, charges and disbursements of any counsel for the Borrower or the Administrative Agent) incurred by or asserted against the Borrower or the Administrative Agent by any Governmental Instrumentality to the extent imposed or assessed as a result of the failure by such Lender to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation described in clause (e) of this Section that, if properly executed and delivered, would have entitled such Lender at such time to an exemption or reduction in U.S. federal withholding taxes. With respect to the indemnification provided in the immediately preceding sentence, such indemnification shall be made within thirty (30) days after the date the Administrative Agent or the Borrower, as the case may be, makes written demand therefor. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this subsection (ii). The agreements in this subsection (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all other Obligations.

(iii) The Borrower shall also indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required by subsection (ii) above. The applicable Lender shall indemnify the Borrower, and shall make payment in respect thereof, within ten (10) days after demand therefor, for any amount which a Borrower is required to pay to the Administrative Agent pursuant to the immediately preceding sentence.

(e) Each Non-U.S. Lender, on or prior to the date on which such Non-U.S. Lender becomes a Lender hereunder (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only for so long as such Non-U.S. Lender is legally entitled to do so), shall deliver to the Borrower and the Administrative Agent either:

(i) two duly completed copies of either (x) Internal Revenue Service Form W-8BEN claiming eligibility of the Non-U.S. Lender for benefits of an income tax treaty to which the United States is a party or (y) Internal Revenue Service Form W-8ECI, or, in either case, an applicable successor form; or

(ii) in the case of a Non-U.S. Lender that is not legally entitled to deliver either form listed in clause (e)(i) above, (x) a certificate (an “**Exemption Certificate**”) to the effect that such Non-U.S. Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (C) a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code and (y) two duly completed copies of Internal Revenue Service Form W-8BEN or applicable successor form.

(f) The Borrower shall not be obligated to pay any additional amounts to any Lender pursuant to clause (a)(i) of this Section, or to indemnify any Lender pursuant to clause (d) of this Section, in respect of U.S. federal withholding taxes:

(i) imposed on payments of interest, if such Lender, upon becoming a party to this Agreement and thereafter at the request of the Borrower, has failed to deliver to the Borrower documentation described in clause (e) above establishing a complete exemption from such U.S. federal withholding tax or if such documentation that is delivered does not establish a complete exemption from such U.S. federal withholding tax, provided, however, that the Borrower shall be obligated to pay additional amounts to any such Lender pursuant to clause (a)(i) of this Section, and to indemnify any such Lender pursuant to clause (d) of this Section, in respect of such U.S. federal withholding taxes to the extent imposed where any failure to deliver a form or forms or an Exemption Certificate or the failure of such form or forms or Exemption Certificate to establish a complete exemption from U.S. federal withholding tax or inaccuracy or untruth contained therein resulted from a change in any applicable law or any interpretation thereof occurring after the Closing Date, which change rendered such Lender no longer legally entitled to deliver such form or forms or Exemption Certificate or otherwise ineligible for a complete exemption from U.S. federal withholding tax, or rendered the information or certifications made in such form or forms or Exemption Certificate untrue or inaccurate in a material respect;

(ii) imposed as a result of the information or certifications made on any documentation described in clause (e) by such Lender being untrue or inaccurate on the date delivered in any material respect;

(iii) imposed as a result of (A) such Lender designating a successor lending office at which it maintains its Loans which has the effect of causing such Lender to become subject to tax payments in excess of those in effect immediately prior to such designation, except to the extent the redesignation of the Lender’s lending office was made at the request of the Borrower, or (B) such Lender entering into a Lender Assignment Agreement with an Eligible Assignee which has the effect of causing such Eligible Assignee to become subject to tax payments, as the assignee Lender, in excess of the tax payments applicable to the assigning Lender immediately prior to such assignment, except to the extent such assignment was made at the request of the Borrower; or

(iv) to the extent imposed as a result of a failure of such Lender to deliver to the Borrower upon becoming a party to this Agreement, and thereafter at the request of the Borrower, documentation described in clause (e) that, if properly executed and delivered by such Lender, would have entitled such Lender to an exemption or reduction in U.S. federal withholding taxes at such time, provided that such Lender was legally entitled to deliver such documentation and that the furnishing of such documentation would not result in a material adverse consequence to such Lender.

(g) Each Lender, on or prior to the date on which such Lender becomes a Lender hereunder and from time to time thereafter either upon the request of the Borrower or the Administrative Agent or their respective agents or upon expiration or obsolescence of any previously delivered documentation, shall comply with the reporting requirements under Section 1471 or 1472 of the Code and deliver documentation sufficient for the Borrower and the Administrative Agent to determine that such Lender has complied with such applicable reporting requirements. In the event that compliance under Section 1471 or 1472 is not established or such documentation is not delivered, the Borrower shall not be obligated to pay any additional amounts to such Lender pursuant to clause (a)(i), or to indemnify any such Lender pursuant to clause (d), in respect of any such withholding imposed under Sections 1471 or 1472, unless the failure to comply with such Sections or deliver such documentation was a result of such Lender being legally unable to comply with such Sections or deliver such documentation or such compliance or delivery of documentation would materially adversely affect such Lender.

(h) Each Lender shall use reasonable efforts (including reasonable efforts to change its applicable lending office) to avoid the imposition of any Non-Excluded Taxes or Other Taxes; provided, *however*, that such efforts would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (in its sole discretion). The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with such mitigation efforts.

(i) If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 4.6, it shall pay to the Borrower an amount equal to such refund but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 4.6 with respect to the Taxes or Other taxes giving rise to such refund, plus any interest included in such refund by the relevant Governmental Instrumentality attributable thereto, net of all reasonable out-of-pocket expenses of the Administrative Agent or Lender, as the case may be, and without interest (other than interest paid by the relevant Governmental Instrumentality with respect to such refund), provided that the Borrower, upon request of the Administrative Agent or Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Instrumentality) to the Agent or Lender, as the case may be, in the event the Administrative Agent or Lender is required to repay such refund to such Governmental Instrumentality. This subsection shall not be construed to require the Agent or 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.

(j) Any Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such documentation or information prescribed by applicable Laws or reasonably requested by the Borrower or Administrative Agent as will enable the Borrower or Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements. If any such Lender fails to comply with this clause (j), the Borrower shall not be obligated to pay any additional amounts to any Lender pursuant to clause (a)(i) of this Section, or to indemnify any Lender pursuant to clause (d) of this Section in respect of any federal backup withholding tax imposed.

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

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

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

to

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

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

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

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

SECTION 4.11 Replacement of Lenders. Each Lender hereby severally agrees as set forth in this Section. If

(a) any Lender (an “**Affected Lender**”) (i) makes demand upon the Borrower for (or if the Borrower is otherwise required to pay) amounts pursuant to Section 4.3, 4.4, 4.5 or 4.6 and the payment of such additional amounts are, and are likely to continue to be, more onerous in the reasonable judgment of the Borrower than with respect to the other Lenders, (ii) fails to consent to an election, consent, amendment, waiver or other modification to this Agreement or other Loan Document that requires the consent of the Required Lenders and such election, consent, amendment, waiver or other modification is

otherwise consented to by the Required Lenders or (iii) becomes a Defaulting Lender, the Borrower may, at its sole cost and expense, within thirty (30) days of receipt by the Borrower of such demand or notice or such failure to consent or from the date that the Borrower becomes aware that such Lender has become a Defaulting Lender, give notice (a “**Replacement Notice**”) in writing to the Administrative Agent and such Affected Lender of its intention to cause such Affected Lender to sell its Loans and Commitments to another financial institution or other Person (a “**Replacement Lender**”) designated in such Replacement Notice; provided that no Replacement Notice may be given by the Borrower if (A) such replacement conflicts with any applicable law or regulation, (B) any Event of Default shall have occurred and be continuing at the time of such replacement (C) prior to any such replacement, such Lender shall have taken any necessary action under Section 4.5 or 4.6 (if applicable) so as to eliminate the continued need for payment of amounts owing pursuant to Section 4.5 or 4.6. If the Administrative Agent shall, in the exercise its reasonable discretion and within 30 days of its receipt of such Replacement Notice, notify the Borrower and such Affected Lender in writing that the Replacement Lender is satisfactory to the Administrative Agent (such consent not being required where the Replacement Lender is already a Lender), then such Affected Lender shall, subject to the payment of any amounts due pursuant to Section 4.4 by the Borrower, assign, in accordance with Section 12.11, all of its Commitments, Loans and other rights and obligations under this Agreement and all other Loan Documents to such Replacement Lender; provided, however, that (i) such assignment shall be without recourse, representation or warranty (except as to (x) such Affected Lender’s then existing Commitment Amount(s) and the outstanding principal amount of Loans held by such Affected Lender and (y) the absence of Liens arising by, through and under the Affected Lender) and shall be on terms and conditions reasonably satisfactory to such Affected Lender and such Replacement Lender, (ii) the purchase price paid by such designated financial institution shall be in the amount of such Affected Lender’s Loans, together with all accrued and unpaid interest and fees in respect thereof, plus all other amounts (including the amounts demanded and unreimbursed under Sections 4.3, 4.4, 4.5 and 4.6), owing to such Affected Lender or hereunder and (iii) the Borrower shall pay to such Affected Lender and the Administrative Agent all reasonable out-of-pocket expenses incurred by such Affected Lender and the Administrative Agent in connection with such assignment and assumption (including the processing fees described in Section 12.11). Upon the effective date of an assignment described above, the Replacement Lender shall become a “Lender” for all purposes under the Loan Documents. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any assignment agreement necessary to effectuate any assignment of such Lender’s interests hereunder in the circumstances contemplated by this Section.

(b) Upon any termination or assignment described in clause (a), such replaced Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of any provisions of this Agreement which by their terms survive the termination of this Agreement.

ARTICLE V

CONDITIONS TO LOANS; EFFECTIVENESS

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

SECTION 5.1.1 Cases. The Cases shall have been commenced.

SECTION 5.1.2 First Day Orders. The Administrative Agent shall have reviewed and approved all of the First Day Orders and all related pleadings to be entered on the Petition Date or shortly thereafter.

SECTION 5.1.3 Interim Order. (a) The Bankruptcy Court shall have entered the Interim Order substantially in the form of Exhibit A no later than five (5) Business Days after the Petition Date, upon motion in form and substance reasonably satisfactory to the Administrative Agent and on such prior notice to such parties as may be reasonably satisfactory to the Administrative Agent.

(b) The Interim Order shall not have been reversed, modified or amended without the prior written consent of the Administrative Agent, or stayed, vacated or subject to any pending appeal.

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

SECTION 5.1.4 Taxes and Liens Paid. Except as otherwise agreed by the Administrative Agent, the Borrower shall have paid all Taxes due and payable that are Liens against all or a portion of the Collateral and no action shall have been taken against any portion of the Collateral with regard to eminent domain.

SECTION 5.1.5 Authority of the Debtors. Each Debtor shall deliver to the Administrative Agent (x) a copy of its Organizational Documents, certified by an Authorized Representative of such Debtor, and (y) a copy of one or more resolutions or other authorizations of the Board of Managers or Board of Directors, as applicable, of each of the Debtors certified by the Authorized Representative of such Board of Managers or Board of Directors, as applicable, as being in full force and effect on the Closing Date, authorizing the Loans herein provided for, and the execution, delivery and performance of this Agreement, and any Instruments required hereunder or thereunder to which each such Person is a party.

SECTION 5.1.6 Incumbency of the Debtors. Each Debtor shall deliver to the Administrative Agent a certificate, signed by an Authorized Representative of such Debtor, and dated as of the Closing Date, as to the incumbency of the Person or Persons authorized to execute and deliver this Agreement, and any Instruments or agreements required hereunder or thereunder to which each such Person is a party.

SECTION 5.1.7 Governmental Approvals. The Administrative Agent shall have received copies of any approval by any Governmental Instrumentality required in connection

with the Loans and the transactions contemplated hereby and by the other Loan Documents, which the Administrative Agent may reasonably have requested in connection therewith, such documents to be reasonably satisfactory in form and substance to the Administrative Agent.

SECTION 5.1.8 No Violation of Laws, Regulations. Neither the entering into of this Agreement, nor any Instrument executed in connection therewith, shall violate any law, including Regulation T, Regulation U or Regulation X of the Board of Governors of the F.R.S. Board and all applicable environmental laws and regulations. The Administrative Agent shall have received reasonably satisfactory evidence that all governmental and third party approvals necessary or advisable in connection with the DIP Facility and the continuing operations of the Debtors shall have been obtained and be in full force and effect, all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the DIP Facility or the financing thereof.

SECTION 5.1.9 Fees. All amounts required to be paid to or deposited with the Administrative Agent, and all Taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 5.1, shall have been paid or deposited, as the case may be, in full. The Borrower shall have paid or caused to be paid all Taxes, fees, expenses and other charges then due and payable by it under this Agreement and the other Loan Documents, including all Taxes, fees, costs and expenses due and payable pursuant to Sections 3.3 and 12.3, if then invoiced, in each case to the extent required to be paid by the Borrower.

SECTION 5.1.10 Delivery of Loan Documents by the Loan Parties. The Administrative Agent shall have received this Agreement, duly executed and delivered by Authorized Representatives of the respective Loan Parties and satisfactory to the Administrative Agent.

SECTION 5.1.11 Insurance Policies. Insurance maintained pursuant to the Prepetition First Lien Credit Agreement shall be in place and in full force and effect thereon.

SECTION 5.2 Conditions Precedent to All Loans. Not in limitation but in furtherance of the other conditions in this Agreement and the other Loan Documents after the Closing Date, the following ongoing conditions, in addition to the conditions contained in Sections 2.2 and 5.1, shall be satisfied or waived prior to making any Loan (provided that the conditions set forth in Section 5.2.1 are not required to be satisfied for the making of any Loans after the date of delivery of a Carve-out Trigger Notice if the proceeds of such Loans will be used solely to pay Post-trigger Carve-out Expenses).

SECTION 5.2.1 Compliance with Warranties, No Default, etc. Both before and after giving effect to any Borrowing (but, if any Default of the nature referred to in Section 8.1.5 shall have occurred with respect to any other Indebtedness, without giving effect to the application, directly or indirectly, of the proceeds thereof) the following statements shall be true and correct:

(a) the representations and warranties set forth in each Loan Document shall, in each case, be true and correct in all material respects (except to the extent qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) with the same effect as if then made (unless stated to relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except to the extent qualified by materiality, in which case such representations and warranties shall be true and correct in all respects) as of such earlier date); and

(b) no Default shall have then occurred and be continuing.

SECTION 5.2.2 Borrowing Request. The Administrative Agent shall have received a Borrowing Request for the Loan being requested executed by an Authorized Representative of the Borrower together with all attachments, exhibits and certificates which conform to the requirements of Section 2.2. Each delivery of a Borrowing Request and the acceptance by the Borrower of the proceeds of the Loans requested in such Borrowing Request (unless such Borrowing Request is with respect to Loans to be made after the date of delivery of a Carve-out Trigger Note and the proceeds of such Borrower will be used solely to pay Post-trigger Carve-out Expenses) shall constitute a representation and warranty by the Borrower that on the date of such Loan (both immediately before and after giving effect to such Loan and the application of the proceeds thereof) the statements made in Section 5.2.1 are true and correct in all material respects.

SECTION 5.2.3 No Restriction. No order, judgment or decree of any court, arbitrator or Governmental Instrumentality shall purport to enjoin or restrain any Debtor, the Administrative Agent and/or any of the Lenders from making the Borrowing to be made by it on the date set forth in the Borrowing Request.

SECTION 5.2.4 Satisfactory Form and Substance. All documents, closing certificates, resolutions and/or certificates executed or submitted with respect to such Borrowing shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel.

SECTION 5.3 Loans Following the Interim Order. The making of any Loan after sixty (60) days following the date on which the Bankruptcy Court enters the Interim Order shall be subject to the further condition that the Final Order shall have been entered by the Bankruptcy Court and such Final Order shall not have been reversed, modified or amended without the prior written consent of the Administrative Agent, stayed, vacated or subject to any pending appeal (provided that the conditions set forth in Section 5.2.1 are not required to be satisfied for the making of any Loans after the date of delivery of a Carve-out Trigger Notice if the proceeds of such Loans will be used solely to pay Post-trigger Carve-out Expenses).

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

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

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

SECTION 6.2 Due Authorization, Non-Contravention, etc. The execution, delivery and performance by the Debtors of this Agreement and each of the other Loan Documents to which it is a Party are, in each case, within the such Person's powers, have been duly authorized by all necessary action, and do not

- (a) contravene any Organizational Documents of such Person;
- (b) contravene any of the Loan Documents or any other material contractual restriction binding on or affecting such Person;
- (c) contravene (i) any court decree or order binding on or affecting any such Person or (ii) any Legal Requirement binding on or affecting any such Person; or
- (d) result in, or require the creation or imposition of, any Lien on any of such Person's properties (other than Permitted Liens).

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

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

SECTION 6.5 Budget. Each Budget:

(a) sets forth the amount allocated to each line item during the thirteen (13) week period covered by such Budget and the total amounts which are anticipated to be incurred through the end of such thirteen (13) week period;

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

(c) has been prepared in good faith, and to the best knowledge of the Borrower, fairly represents the Borrower's current expectation as to the matters covered thereby (provided that (i) each Budget will be subject to significant uncertainties and contingencies beyond the Borrower's control, (ii) the Borrower does not provide any assurance that the results described in any Budget will actually be achieved, and (iii) the actual financial performance of the Borrower may differ from that set forth in any Budget and such differences may be material).

SECTION 6.6 Financial Information. The financial statements of the Debtors furnished or to be furnished to the Administrative Agent pursuant to Section 7.1.1 or otherwise have been prepared in accordance with GAAP consistently applied, and present fairly in all material respects the financial condition of the Debtors as at the dates thereof and the results of their operations for the periods then ended, subject to changes resulting from normal year end audit adjustments and the absence of footnote disclosures. All balance sheets, and all statements of operations, equity amounts and cash flow, furnished or to be furnished pursuant to Section 7.1.1 or otherwise have been and will for periods following the Closing Date be prepared in accordance with GAAP consistently applied, and do or will present fairly, in all material respects, the financial condition of the Debtors as at the dates thereof and the results of their operations for the periods then ended, subject to changes resulting from normal year end audit adjustments and the absence of footnote disclosures.

SECTION 6.7 No Material Adverse Effect. No event or circumstance has occurred since December 31, 2009 that has had a Material Adverse Effect.

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

SECTION 6.9 Ownership of Properties. Each Debtor owns (i) in the case of owned real property, good and marketable fee title to, and (ii) in the case of owned personal property, good and valid title to, or, in the case of leased real or personal property, valid and enforceable leasehold interests (as the case may be) in, all of its properties and assets, tangible and intangible, of any nature whatsoever, free and clear in each case of all Liens or claims, except for Permitted Liens. No Debtor is a party to any agreement which grants an option to any such Person to purchase or lease any real property or personal property.

SECTION 6.10 Taxes. The Debtors have filed, or caused to be filed, all material Tax returns that are required to have been filed by it or them in any jurisdiction, and have paid all

material Taxes shown to be due and payable on such returns and all other Taxes and assessments payable by it or them, to the extent the same have become due and payable (other than those Taxes that it is contesting in good faith and by appropriate proceedings, with adequate, segregated reserves established for such Taxes) and, to the extent such Taxes are not due, has established reserves therefor by allocating amounts that are adequate for the payment thereof and are required by GAAP.

SECTION 6.11 Pension and Welfare Plans. In the five (5) years prior to the Closing Date and prior to the date of any Loan hereunder, no steps have been taken to terminate any Pension Plan, and no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under section 303(k) of ERISA or Section 430(k) of the Code, unless such Lien is not valid pursuant to the Bankruptcy Code. No condition exists or event or transaction has occurred with respect to any Pension Plan or Multiemployer Plan which would reasonably be expected to result in a Material Adverse Effect. No Debtor has any material Contingent Liability with respect to any post-retirement benefit under a Welfare Plan, other than liability for continuation coverage described in Part 6 of Title I of ERISA or which would not reasonably be expected to result in a Material Adverse Effect.

SECTION 6.12 Reorganization Matters. The Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and proper notice of the hearings to consider entry of the Interim Order has been given and proper notice of the hearing to consider entry of the Final Order will be given.

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

(b) The Interim Order (with respect to the Interim Period) or the Final Order (with respect to the period following the Interim Period), as the case may be, is in full force and effect and has not been reversed, stayed, modified, varied or amended without the consent of the Administrative Agent.

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

(d) With respect to any Loan following the Interim Period, the Bankruptcy Court shall have entered the Final Order no later than sixty (60) days after the entry of the Interim Order, in form and substance satisfactory to the Administrative Agent
(A) authorizing and approving the DIP Facility, the Loan Documents and the transactions

contemplated hereby and by the other Loan Documents, including, without limitation, the granting of the superpriority status, security interests and liens, and the payment of all fees, referred to herein, in any other Loan Document and in the Administrative Agent Fee Letter and (B) lifting the automatic stay to permit the Loan Parties to perform their obligations and the Administrative Agent and the Lenders to exercise their rights and remedies with respect to the DIP Facility, this Agreement and the other Loan Documents, which Final Order shall be in full force and effect, shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the Administrative Agent. All orders entered by the Bankruptcy Court pertaining to cash management, adequate protection and the DIP Facility shall, and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith shall be in form and substance satisfactory to Administrative Agent. Pursuant to the terms of the Final Order, the automatic stay shall have been modified to permit the creation and perfection of the Secured Parties' Liens and security interests and shall have been automatically vacated to permit enforcement of the Secured Parties' rights and remedies under this Agreement and the other Loan Documents.

SECTION 6.13 Environmental Warranties. Except as set forth in Item 6.13 in the Disclosure Schedule:

- (a) all facilities and property (including underlying groundwater) owned or leased by the Debtors have been, and continue to be, owned or leased by such Person in material compliance with all Environmental Laws;
- (b) there have been no past, and there are no pending or threatened
 - (i) claims, complaints, notices or requests for information received by any Debtor with respect to any alleged violation of any Environmental Law, or
 - (ii) complaints, notices or inquiries to any Debtor regarding potential liability under any Environmental Law relating to such facilities and property;
- (c) there have been no Releases of Hazardous Substances at, on or under any property now or previously owned or leased by any Debtor that, singly or in the aggregate, have, or could reasonably be expected to result in a Material Adverse Effect;
- (d) the Debtors have been issued and are in material compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters;
- (e) no property now or previously owned or leased by any Debtor is listed or proposed for listing (with respect to owned property only) on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list of sites requiring investigation or clean-up;

(f) there are no underground storage tanks, active or, to either Borrower's knowledge, abandoned, including petroleum storage tanks, on or under any property now or previously owned or leased by any Debtor;

(g) no Debtor has directly transported or directly arranged for the transportation of any Hazardous Substances to any location which is listed or proposed for listing on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations which may lead to material claims against any Debtor for any remedial work, damage to natural resources or personal injury, including claims under CERCLA;

(h) there are no polychlorinated biphenyls or friable asbestos present at any property now owned or leased by any Debtor; and

(i) no conditions exist at, on or under any property owned or leased by any Debtor which, with the passage of time, or the giving of notice or both, would give rise to material liability under any Environmental Law.

SECTION 6.14 Intellectual Property. The Debtors own or license (as the case may be) or will own or hold licenses for all such patents, patent rights, trademarks, trademark rights, trade names, trade name rights, service marks, service mark rights and copyrights as the Borrower considers necessary for the conduct of the businesses of the Debtors without any infringement upon rights of other Persons. Except as set forth on Item 6.14 of the Disclosure Schedule, there is no individual patent, patent right, trademark, trademark right, trade name, trade name right, service mark, service mark right or copyright the loss of which could reasonably be expected to result in a Material Adverse Effect.

SECTION 6.15 Regulations U and X. The Debtors are not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of any Loan will be used to purchase or carry margin stock or otherwise for a purpose which violates, or would be inconsistent with, F.R.S. Board Regulation U or X. Terms for which meanings are provided in F.R.S. Board Regulation U or X or any regulations substituted therefor, as from time to time in effect, are used in this Section 6.15 with such meanings.

SECTION 6.16 Accuracy of Information. None of the factual information, taken as a whole, heretofore or contemporaneously furnished by or on behalf of any Debtor to the Administrative Agent or any Lender for the purposes of, or in connection with, the Loan Documents contains any untrue statement of a material fact, or omits to state any material fact necessary to make such information, taken as a whole, not misleading in any material respect. No factual information, taken as a whole, hereafter furnished in connection with any Loan Document by any Debtor to the Administrative Agent or any Lender will contain any untrue statement of a material fact on the date as if which such information is dated or certified or will omit to state any material fact necessary to make such information not misleading in any material respect on the date as if which such information is dated or certified.

SECTION 6.17 Contingent Liabilities. No Debtor has any material Contingent Liabilities in respect of Indebtedness or obligations except those authorized under or contemplated by the Loan Documents and not prohibited by this Agreement.

SECTION 6.18 Business, Debt, Liens, etc. No Debtor has conducted any business other than the business engaged in on the date of this Agreement and similar or related business activities. No Debtor has any outstanding Indebtedness other than Indebtedness incurred or permitted under the Loan Documents or liabilities other than those incurred or permitted under the Loan Documents. Except for Permitted Liens, no Debtor has secured or agreed to secure any Indebtedness by any Lien upon any of its or their present or future revenues or assets, or upon the Equity Interests of any Debtor. No Debtor has any outstanding Lien or obligation to create Liens on or with respect to any of its properties or revenues, other than Permitted Liens.

SECTION 6.19 Fees and Enforcement. Other than amounts that have been paid in full or will have been paid in full by the Closing Date or the date thereafter when due for same, no material fees or Taxes, including stamp, transaction, registration or similar taxes, are required to be paid for the legality, validity or enforceability of the Loan Documents.

SECTION 6.20 ERISA Compliance. The Debtors and each member of the Controlled Group have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each Pension Plan in compliance in all material respects with the currently applicable provisions of ERISA and the Code and have not incurred any material liability to the PBGC or a Pension Plan under Title IV of ERISA (other than liability for premiums due in the ordinary course).

SECTION 6.21 No Plan Assets. The Debtors do not hold “plan assets” (within the meaning of 29 C.F.R. 2510.3-101, as modified by Section 3(42) of ERISA).

SECTION 6.22 Location; FEIN. The “location” (as such term is used in Section 9-301 of the Uniform Commercial Code as in effect in the State of New York from time to time) of each Debtor is set forth in Item 6.22 of the Disclosure Schedule. The federal employer identification numbers of the Debtors are set forth in Item 6.22 of the Disclosure Schedule.

SECTION 6.23 Government Regulation. No Debtor is subject to regulation under the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

SECTION 6.24 Subsidiaries. The Borrower represents that it has no Subsidiaries, except those Subsidiaries which are identified in Item 6.24 of the Disclosure Schedule.

SECTION 6.25 Prepetition Liens and Security. (a) The Debtors recognize and acknowledge that the credit extended by the Prepetition First Lien Agent, the Prepetition First Lien Lenders and the Prepetition First Lien Secured Parties pursuant to the Prepetition First Lien Credit Agreement is secured by valid, perfected, enforceable first-priority Liens and security interests in the Prepetition Collateral granted by the Debtors to the Prepetition First Lien Agent, the Prepetition First Lien Lenders and the Prepetition First Lien Secured Parties, which Liens

and security interests are not subject to challenge, subordination, defense, disallowance or otherwise are avoidable.

(b) Any objection or challenge by any statutory committee appointed in the Cases, creditor, or party in interest in the Cases to the Prepetition First Lien Agent's, the Prepetition First Lien Lenders' and the Prepetition First Lien Agent's Liens and security interests in the Prepetition Collateral must be made within seventy five (75) days from the date counsel is engaged for any official committee of unsecured creditors, or, if no counsel or no official committee of unsecured creditors is appointed, within ninety (90) days of the Petition Date. If any statutory committee appointed in the Cases, creditor, or party in interest in the Cases fails to challenge or object to the Prepetition First Lien Agent's Liens and security interests in the Prepetition Collateral within such time period, such failure shall be deemed an acceptance of such Liens and security interests and will waive such party's rights to challenge such Liens and security interests.

SECTION 6.26 Holding Companies. Holdings has no property or assets other than the Capital Stock of Intermediate Holdings and Restricted Payments permitted under Section 7.2.5. Intermediate Holdings has no property or assets other than the Capital Stock of the Borrower and Restricted Payments permitted under Section 7.2.5.

ARTICLE VII

COVENANTS

SECTION 7.1 Affirmative Covenants. The Borrower agrees with the Administrative Agent and each Lender that, until all Commitments have terminated and all Obligations have been indefeasibly paid and performed in full (other than contingent and indemnification Obligations not then due and payable), the Borrower will perform or cause to be performed the obligations set forth in this Section 7.1.

SECTION 7.1.1 Financial Information, Reports, Notices, etc. The Borrower will furnish, or will cause to be furnished, to the Administrative Agent copies of the following financial statements, reports, notices and information (which, in each case, may be delivered by electronic transmission):

(a) as soon as available and in any event within forty five (45) days after the end of each month other than the last month of any Fiscal Quarter, an unaudited consolidated balance sheet, statements of income and cash flow of each of the Debtors, in each case, as of the end of such month and for the period commencing at the end of the previous Fiscal Year and ending with the end of such month, certified as complete and correct in all material respects by its chief financial or accounting Authorized Representative;

(b) promptly after becoming available and in any event within forty five (45) days after the end of each Fiscal Quarter of each Fiscal Year, an unaudited consolidated balance sheet of the Debtors as of the end of such Fiscal Quarter and consolidated statements of income and cash flow of the Debtors for such Fiscal Quarter

and for the period commencing at the end of the previous Fiscal Year and ending with the end of such Fiscal Quarter, including, in each case, in comparative form the figures for the corresponding Fiscal Quarter in, and year to date portion of, the immediately preceding Fiscal Year, certified as complete and correct in all material respects on behalf of the Borrower by its chief financial or accounting Authorized Representative;

(c) as soon as available and in any event within ninety (90) days after the end of each Fiscal Year, a copy of the consolidated balance sheet of the Debtors, and the related consolidated statements of income and cash flow of the Debtors for such Fiscal Year, setting forth in comparative form the figures for the immediately preceding Fiscal Year;

(d) as soon as possible and in any event within three (3) days after the occurrence of a Default under the Loan Documents, a statement of the chief executive, financial or accounting Authorized Representative of the Borrower setting forth details of such Default or other default, as the case may be, and the action which such Person has taken and proposes to take with respect thereto;

(e) as soon as possible and in any event within three (3) days after (x) the occurrence of any material adverse development with respect to any litigation, action, proceeding or labor controversy of the type and materiality described in Item 6.8 of the Disclosure Schedule or (y) the commencement of any litigation, action, proceeding or labor controversy of the type and materiality described in Item 6.8 of the Disclosure Schedule, notice thereof and, to the extent the Administrative Agent reasonably requests, copies of all documentation relating thereto, except to the extent that such delivery would breach any confidentiality agreement or affect adversely the privileged nature of any such document;

(f) as soon as possible and in any event within three (3) Business Days after becoming aware of (i) the institution of any steps by any Debtor or any other Person to terminate any Pension Plan if termination of such plan would reasonably be expected to result in a material liability to any Debtor, (ii) the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code, (iii) the taking of any action with respect to a Pension Plan which would reasonably be expected to result in the requirement that any Debtor or any member of its Controlled Group furnish a bond or other security to the PBGC or such Pension Plan, (iv) the occurrence of any event with respect to any Pension Plan or Multiemployer Plan which would reasonably be expected to result in the incurrence by any Debtor of any material liability, fine or penalty, notice thereof and copies of all documentation relating thereto or (v) any material increase in the Contingent Liability of any Debtor with respect to any post-retirement Welfare Plan benefit, notice thereof and copies of all documentation relating thereto other than liability for continuation coverage described in Part 6 of Title I of ERISA;

(g) promptly when available and in any event no later than forty-five (45) days after the last day of each Fiscal Year (commencing after the Closing Date), a budget for such Fiscal Year, which budget shall be prepared on a Fiscal Quarter basis and shall

contain a projected, consolidated balance sheet and statement of earnings and cash flow of each of the Debtors for such Fiscal Year, prepared in reasonable detail by the chief accounting or financial Authorized Representative of the Borrower (the Administrative Agent shall have the right to request clarifications on such budget within thirty (30) days after delivery thereof);

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

(i) the occurrence or existence of any violation of Environmental Law requiring notice to a Governmental Instrumentality or with respect to which notice is received from a Governmental Instrumentality;

(j) any other event or development which could reasonably be expected to result in a Material Adverse Effect; and

(k) such other information respecting the condition or operations, financial or otherwise, of the Debtors as the Administrative Agent or any Lender through the Administrative Agent may reasonably request.

SECTION 7.1.2 Budget.

(a) No later than 2:00 p.m. Chicago time on Wednesday of each week (or, if such Wednesday is not a Business Day, on the next succeeding Business Day), the Borrower shall deliver to the Administrative Agent a budget (which may be delivered by electronic transmission), satisfactory to the Administrative Agent, that is substantially in the form of the budget attached to this Agreement as Exhibit B and that covers the period of thirteen (13) weeks commencing on the Monday of such week.

(b) No later than 2:00 p.m. Chicago time on Wednesday of each calendar week (or, if such Wednesday is not a Business Day, on the next succeeding Business Day), the Borrower shall deliver to the Administrative Agent a Weekly Cash Flow Variance Report (which may be delivered by electronic transmission), satisfactory to the Administrative Agent, with respect to the Budget for the thirteen (13) week period ended on the Friday of the previous week (or, if shorter, the period from the Petition Date to such Friday).

(c) The Borrower shall promptly provide the Administrative Agent with reasonably detailed back-up documentation relating to any Debtor's cash flows as may be reasonably requested by the Administrative Agent from time to time.

SECTION 7.1.3 Maintenance of Existence; Compliance with Contracts, Laws, etc.
Each Debtor will preserve and maintain its legal existence, rights (charter and statutory), material licenses, permits and franchises, perform in all material respects their obligations under material agreements to which such Debtor is a party (other than executory contracts and unexpired leases which the Debtors shall, in compliance with Section 7.2.9, reject pursuant to Section 365 of the

Bankruptcy Code), and comply in all material respects with all applicable laws, rules, regulations and orders, including the payment (before the same become delinquent), of all Taxes, imposed upon any Debtor or upon their property except to the extent being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on the books of the Debtors, as applicable.

SECTION 7.1.4 Insurance. Each Debtor will maintain:

(a) insurance on its property with financially sound and reputable insurance companies against loss and damage in at least the amounts (and with only those deductibles) customarily maintained, and against such risks as are typically insured against in the same general area, by Persons of comparable size engaged in the same or similar business as the Debtors; and

(b) all worker's compensation, employer's liability insurance or similar insurance as may be required under the laws of any state or jurisdiction in which it may be engaged in business.

Without limiting the foregoing, all insurance policies required pursuant to this Section shall (i) name the Administrative Agent on behalf of the Secured Parties as mortgagee or loss payee (in the case of property insurance) or additional insured (in the case of liability insurance), as applicable, and provide that no cancellation or modification of the policies will be made without thirty (30) days' prior written notice to the Administrative Agent and (ii) be in addition to any requirements to maintain specific types of insurance contained in the other Loan Documents

SECTION 7.1.5 Books and Records. Each Debtor will keep books and records in accordance with GAAP which accurately reflect all of its business affairs and transactions and permit each Secured Party or any of their respective representatives, at reasonable times and intervals upon reasonable prior notice to the Borrower, to visit each Debtor's offices, to discuss such Debtor's financial matters with its officers and employees, and its independent public accountants (and the Borrower hereby authorizes such independent public accountant to discuss each Debtor's financial matters with each Secured Party or their representatives whether or not any representative of such Debtor is present) and to examine (and photocopy extracts from) any of its books and records. The Borrower shall pay any reasonable out-of-pocket fees of such independent public accountant incurred in connection with any Secured Party's exercise of its rights pursuant to this Section.

SECTION 7.1.6 Environmental. Each Debtor will:

(a) use and operate all of its facilities and properties in compliance with all Environmental Laws, keep all necessary permits, approvals, certificates, licenses and other authorizations relating to environmental matters in effect and remain in compliance therewith, and handle all Hazardous Substances thereat in compliance with all applicable Environmental Laws; and

(b) promptly notify the Administrative Agent and provide copies upon receipt of all written claims, complaints, notices or inquiries relating to potential liability under or non-compliance with Environmental Laws, and shall promptly resolve any non-

compliance with Environmental Laws and keep its property free of any Lien imposed by any Environmental Law.

SECTION 7.1.7 Additional Collateral. The Debtors shall cause the Administrative Agent to have at all times a first priority perfected security interest (subject only to Permitted Liens) in all of the DIP Collateral. Without limiting the generality of the foregoing, the Debtors shall, to the extent required by the Administrative Agent, execute, deliver and/or file (as applicable) or cause to be executed, delivered and/or filed (as applicable), pledge agreement(s), the security agreement(s), mortgages, Uniform Commercial Code (Form UCC-1) financing statements, Uniform Commercial Code continuation statements, Uniform Commercial Code termination statements, and other documentation that may be required under applicable law, or that the Administrative Agent may reasonably request, in order to effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and first priority (subject to Permitted Liens) of the Liens created or intended to be created by the Loan Documents, in each case in form and substance reasonably satisfactory to the Administrative Agent. In addition, from time to time, the Borrower will, at its cost and expense, promptly secure the Obligations by pledging or creating, or causing to be pledged or created, perfected Liens with respect to such of its assets and properties as the Administrative Agent or the Required Lenders shall designate, it being agreed that it is the intent of the parties that the Obligations shall be secured by, among other things, substantially all the assets of the Debtors (including real and personal property acquired subsequent to the Closing Date). Such Liens will be created under the Loan Documents in form and substance reasonably satisfactory to the Administrative Agent, and the Borrower shall deliver or cause to be delivered to the Administrative Agent all such instruments and documents (including title insurance policies and lien searches) as the Administrative Agent shall reasonably request to evidence compliance with this Section.

SECTION 7.1.8 Maintenance of Properties. Each Debtor will maintain, preserve, protect and keep its respective material properties in working order and condition (ordinary wear and tear excepted), and make necessary repairs, renewals and replacements (as determined by Borrower in accordance with this Agreement) so that the business carried on by the Debtors may be conducted at all times in the manner operated as of the date hereof.

SECTION 7.1.9 Preserving the DIP Collateral; Further Assurances. The Debtors shall undertake all actions and execute all further documents, financing statements, agreements and instruments which are necessary or appropriate in the reasonable judgment of the Administrative Agent or as may be required by other applicable law to (x) effectuate the transactions contemplated by the Loan Documents and in order to grant, preserve, protect and perfect the validity and priority of the security interests created or intended to be created by the Loan Documents; (y) maintain the Secured Parties' respective security interests under the Loan Documents in the DIP Collateral in full force and effect at all times (including the priority thereof) and (z) preserve and protect the DIP Collateral and protect and enforce such Person's rights and title and the respective rights of the Secured Parties to the DIP Collateral, including the making or delivery of all filings and recordations (including filing UCC and other financing statements and mortgages in form and substance satisfactory to the Administrative Agent), the delivery to the Administrative Agent of all such instruments and documents (including title insurance policies and lien searches) as the Administrative Agent shall reasonably request to

evidence compliance with this Section, the payments of fees and other charges, the issuance of supplemental documentation, the discharge of all claims or other Liens (other than the Permitted Liens) adversely affecting the respective rights of the Secured Parties to and under the DIP Collateral (except to the extent same is being contested in good faith by appropriate governmental proceedings promptly instituted and diligently contested, so long as (1) such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor and (2) in case of any charge or claim which has or may become a Lien against any of the DIP Collateral, such Lien shall be subject and subordinate in all respects to the Liens held by the Administrative Agent (unless bonded) and such contested proceedings conclusively operate to stay the sale of any portion of the DIP Collateral to satisfy such charge or claim which has or may become a Lien against any of the DIP Collateral) and the publication or other delivery of notice to third parties. The Debtors agree to provide such evidence as the Administrative Agent shall reasonably request as to the perfection and priority status of each such security interest and Lien.

SECTION 7.1.10 Cash Management. Subject to the Budget, the Debtors shall maintain a cash management system substantially identical to the cash management system that they maintained immediately prior to the Petition Date. In connection with the foregoing, the Debtors shall seek the entry of First Day Orders, satisfactory to the Administrative Agent and Harris in their discretion, providing for the continuation of the cash management system.

SECTION 7.1.11 Reorganization Matters. At the request of the Administrative Agent, the Borrower will submit to the Administrative Agent all pleadings, motions, applications and judicial information, in each case filed by or on behalf of any Debtor with the Bankruptcy Court or provided by or to the U.S. Trustee (or any information officer, examiner or interim receiver, if any, appointed in any Case) or any Committee, at the time such document is filed with the Bankruptcy Court, or provided by or, to the U.S. Trustee (or any information officer, monitor or interim receiver, if any, appointed in any Case) or any Committee.

SECTION 7.2 Negative Covenants. The Borrower agrees with the Administrative Agent and each Lender that, until all Commitments have terminated and all Obligations have been indefeasibly paid and performed in full (other than contingent and indemnification Obligations not then due and payable), the Debtors will perform the obligations set forth in this Section 7.2.

SECTION 7.2.1 Business Activities. The Debtors will not engage in any business activity except those business activities engaged in on the date of this Agreement.

SECTION 7.2.2 Indebtedness. The Debtors will not, directly or indirectly, create, incur, assume or suffer to exist or otherwise become or be liable in respect of any Indebtedness or issue any shares of Preferred Stock, or be or become liable as endorser, guarantor, surety or otherwise for any Indebtedness of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein (except as allowed under Section 7.2.4 hereof) or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person, other than, without duplication, the following:

- (i) Indebtedness in respect of the Obligations;
- (ii) Indebtedness consisting of obligations under the Prepetition First Lien Loan Documents;
- (iii) Indebtedness consisting of obligations under the Prepetition Second Lien Loan Documents;
- (iv) Indebtedness existing as of the Closing Date which is identified in Item 7.2.2 of the Disclosure Schedule;
- (v) Indebtedness that is expressly permitted to be incurred pursuant to the Budget;
- (vi) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts maintained in the ordinary course of business; and
- (vii) unsecured Indebtedness of the Borrower or any of its Subsidiaries owing to the Borrower or any of its Subsidiaries.

SECTION 7.2.3 Liens. No Debtor shall create, incur, assume or suffer to exist any Lien upon any of its property (including Capital Stock of any Person), revenues or assets, whether now owned or hereafter acquired, or any proceeds, income or profits therefrom, or assign or convey any right to receive income therefrom, excluding, however, Permitted Liens.

SECTION 7.2.4 Investments. No Debtor shall make, incur, assume or suffer to exist any Investment in any other Person, except the following investments, as set forth in the Budget:

- (a) Investments existing on the Closing Date and identified in Item 7.2.4 of the Disclosure Schedule;
- (b) Cash Equivalent Investments;
- (c) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;
- (d) Investments constituting (i) accounts receivable arising, (ii) trade debt granted, or (iii) deposits made in connection with the purchase price of goods or services, in each case in the ordinary course of business;
- (e) Investments consisting of loans or advances to employees of the Borrower or any of its Subsidiaries made in the ordinary course of business in an aggregate amount not to exceed \$50,000 at any one time outstanding;

(f) Investments consisting of loans or advances made by the Borrower or any of its Subsidiaries to the Borrower or any of its Subsidiaries; and

(g) Investments of Holdings and Intermediate Holdings permitted under clause (b) of Section 7.2.20.

provided that, any Investment which when made complies with the requirements of the definition of the term “Cash Equivalent Investment” may continue to be held notwithstanding that such Investment if made thereafter would not comply with such requirements.

SECTION 7.2.5 Restricted Payments, etc. No Debtor shall declare or make a Restricted Payment, or make any deposit for any Restricted Payment, other than Restricted Payments made by the Borrower to Holdings to pay general administrative costs and expenses and income tax payments of Holdings in the amounts, and at the times, set forth in the Budget.

SECTION 7.2.6 Capital Expenditures, etc. No Debtor shall make or commit to make Capital Expenditures, other than the Capital Expenditures set forth in the Budget.

SECTION 7.2.7 No Prepayment of Second Lien Debt. No Debtor will (a) make any payment or prepayment of principal of, or premium or interest on, any Indebtedness under the Prepetition Second Lien Loan Documents or otherwise redeem, retire, purchase, defease or otherwise acquire any loan made under the Prepetition Second Lien Loan Documents; or (b) make any deposit (including the payment of amounts into a sinking fund or other similar fund) for any of the foregoing purposes.

SECTION 7.2.8 Consolidation, Merger. No Debtor will liquidate or dissolve, consolidate with, or merge into or with, any other Person, or purchase or otherwise acquire all or substantially all of the assets of any Person (or any division thereof).

SECTION 7.2.9 Restrictions on Dispositions. No Debtor shall sell, transfer, lease, contribute or otherwise convey (including by way of merger), or grant options, warrants or other rights with respect to, any of its or their assets (including accounts receivable and Capital Stock) to any Person (each such conveyance, an “**Asset Sale**”) without the prior written consent of the Administrative Agent and the Required Lenders; provided, however, that the Debtors may, without the prior consent of the Administrative Agent or the Required Lenders,

(a) sell inventory in the ordinary course of business;

(b) dispose of (i) property with a value that, when taken together with the value of all other property disposed of pursuant to this clause (b), is less than \$50,000, and (ii) obsolete, worn out or surplus assets or assets no longer used or useful in the business of the Debtors, so long as with respect to such property listed in subsection (ii) of clause (b), the consideration received for the disposition thereof shall be in an amount at least equal to the fair market value thereof as reasonably determined by the Administrative Agent; and

(c) reject any executory contract or unexpired lease pursuant to Section 365 of the Bankruptcy Code if either (i) such executory contract or unexpired lease is listed on

Schedule 7.2.9, or (ii) the aggregate amount paid or payable under such executory contract or unexpired lease for the year following the Petition Date is less than \$50,000.

SECTION 7.2.10 Transactions with Affiliates. No Debtor will enter into or cause or permit to exist any arrangement, transaction or contract (including for the purchase, lease or exchange of property or the rendering of services) with any of its other Affiliates, unless such arrangement, transaction or contract is (a) described on Schedule 7.2.10, or (b) on fair and reasonable terms no less favorable to such Debtor than it could obtain in an arm's-length transaction with a Person that is not an Affiliate other than transactions among the Debtors.

SECTION 7.2.11 Negative Pledges, Restrictive Agreements, etc. No Debtor shall, after the date hereof, enter into any agreement (excluding, however, this Agreement, any other Loan Document and the Restructuring Agreement) governing any Indebtedness that prohibits

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

(b) the ability of any Debtor to amend or otherwise modify any Loan Document; or

(c) the ability of any Subsidiary to make any payments, directly or indirectly, to the Borrower, including by way of dividends, advances, repayments of loans, reimbursements of management and other intercompany charges, expenses and accruals or other returns on investments.

SECTION 7.2.12 Sale and Leaseback. No Debtor will permit any of its Subsidiaries to, directly or indirectly enter into any agreement or arrangement providing for the sale or transfer by it of any property (now owned or hereafter acquired) to a Person and the subsequent lease or rental of such property or other similar property from such Person.

SECTION 7.2.13 Capital Stock. No Debtor shall issue, transfer or sell any Capital Stock of its Subsidiaries (whether for value or otherwise) to any Person.

SECTION 7.2.14 Hazardous Substances. No Debtor shall, release, emit or discharge into the environment any Hazardous Substances in material violation of any Environmental Law, Legal Requirement or other permit, certificate, approval, license and other authorization necessary in the operation of the Debtors' business.

SECTION 7.2.15 Creation of Subsidiaries. From and after the Closing Date, no Debtor shall create any Subsidiary.

SECTION 7.2.16 Chapter 11 Claims. The Borrower shall not, nor shall the Borrower permit any Debtor to, agree to, incur, create, assume, suffer to exist or permit (a) any administrative expense, unsecured claim, or other superpriority claim or Lien which is pari passu with or senior to the claims or liens of the Secured Parties against the Loan Parties hereunder and the Prepetition First Lien Secured Parties, or apply to the Bankruptcy Court for authority to do so, except as otherwise provided in the Orders or (b) any payment of pre-petition claims except as authorized by order of the Bankruptcy Court.

SECTION 7.2.17 Orders. No Loan Party shall, nor shall any Loan Party permit any of its Subsidiaries to, make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Loan Documents or the Orders without the prior written consent of the Administrative Agent and the Required Lenders.

SECTION 7.2.18 No Changes in Fiscal Year. The fiscal year of the Borrower ends on December 31 of each year; and the Borrower shall not, nor shall it permit any of the Guarantors to, change its fiscal year from its present basis, unless the Administrative Agent shall have approved such change.

SECTION 7.2.19 No Plan Assets. The Debtors shall not hold “plan assets” (within the meaning of 29 C.F.R. 2510.3-101, as modified by Section 3(42) of ERISA).

SECTION 7.2.20 Activities of the Holding Companies. Notwithstanding anything to the contrary herein, Holdings and Intermediate Holdings covenant and agree that each will not:

- (a) engage in any business activity other than in connection with its continuing ownership of the Capital Stock of the Borrower, including performing its obligations and activities under the Loan Documents and incidental thereto;
- (b) purchase, make, incur, assume or permit to exist any Investment in any other Person, except Investments in the Borrower and, in the case of Holdings, Investments in Intermediate Holdings;
- (c) make or commit to make any Capital Expenditure;
- (d) enter into any arrangement which involves the leasing by Holdings or Intermediate Holdings from any lessor of any real or personal property (or any interest therein) other than the lease of office space;
- (e) dispose of any of its assets, other than Restricted Payments permitted under Section 7.2.5;
- (f) create, incur, assume or permit to exist any Indebtedness other than (i) pursuant to the Loan Documents, the Prepetition First Lien Loan Documents and the Prepetition Second Lien Loan Documents (ii) Contingent Liabilities in respect of Indebtedness permitted under this Agreement; or
- (g) create, incur, assume, or permit to exist any Lien upon any of its property, revenues or assets, whether now owned or hereafter acquired, except Liens in favor of the Administrative Agent.

ARTICLE VIII

EVENTS OF DEFAULT

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

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

- (a) any principal of any Loan; or
- (b) any interest on any Loan, any fee described in Article III or any fee or other amount related to any other Obligation and such Default shall continue unremedied for a period of three (3) days.

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

SECTION 8.1.3 Non-Performance of Certain Covenants and Obligations. The Debtors or any other Person named therein shall default in the due performance and observance of any of its obligations under Sections 2.2, 7.1.1, 7.1.2 and 7.2 herein.

SECTION 8.1.4 Non-Performance of Other Covenants and Obligations. Any Debtor shall default in the due performance and observance of any Loan Document executed by it, and such default shall continue unremedied for a period of fifteen (15) days after notice thereof shall have been given to such Person and the Borrower by the Administrative Agent.

SECTION 8.1.5 Default on Other Indebtedness. A default shall occur in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any Indebtedness of any Debtor that was incurred after the Petition Date (other than Indebtedness described in Section 8.1.1) in excess of \$100,000 if the effect of such default is to accelerate the maturity of any such Indebtedness or such default shall continue unremedied for any applicable period of time sufficient to permit the holder or holders of such Indebtedness, or any trustee or agent for such holders, to cause or declare such Indebtedness to become due and payable or to require such Indebtedness to be prepaid, redeemed, purchased or defeased, or to cause an offer to purchase or redeem such Indebtedness to be required to be made, prior to its expressed maturity.

SECTION 8.1.6 Judgments. Any judgment or order entered after the Petition Date with respect to a claim arising after the Petition Date for the payment of money in excess of \$100,000 individually or in the aggregate (excluding, however, any amounts fully covered by insurance (less any applicable deductible) or indemnification and as to which the insurer or the indemnifying party, as the case may be, has acknowledged its responsibility to cover such judgment or order) shall be rendered against any Debtor and such judgment shall not have been vacated or discharged or stayed or bonded pending appeal within thirty (30) days after the entry thereof.

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

(a) termination of a Pension Plan if, as a result of such termination, any Debtor or any such member of its Controlled Group would reasonably be required to make a contribution to such Pension Plan, or would reasonably expect to incur a liability or obligation to such Pension Plan, in excess of \$100,000;

(b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under section 303(k) of ERISA or Section 430(k) of the Code; or

(c) the occurrence of an event with respect to any Multiemployer Plan on account of which any Debtor or any such member of its Controlled Group would incur a liability or obligation in excess of \$100,000.

SECTION 8.1.8 Change of Control. Any Change of Control shall occur.

SECTION 8.1.9 Bankruptcy Matters. Any of the following events shall occur:

(a) the entry of an order: (i) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code or not otherwise permitted pursuant to the Loan Documents except, with the consent of the Administrative Agent, in connection with any financing the proceeds of which shall be used to repay in full the Obligations; (ii) to grant any Lien on any DIP Collateral except as permitted hereunder and under the other Loan Documents; (iii) except as provided in the Interim Order or Final Order, as the case may be, to use cash collateral of the Secured Parties under Section 363(c) of the Bankruptcy Code without the prior written consent of the Administrative Agent or (iv) that reduces, sets-off or subordinates the Obligations; or

(b) the filing by any Debtor of any plan of reorganization or disclosure statement that does not provide for indefeasible payment in full and satisfaction of the Obligations as required herein, on the effective date of such plan of reorganization; or

(c) either Order or this Agreement shall be reversed, amended, supplemented, stayed, vacated or otherwise modified (or any Debtor shall apply for authority to do so) without the prior written consent of the Administrative Agent, or shall cease to be in full force and effect or is stayed in any respect; or any Debtor fails to perform any of its obligations under any Order; or

(d) the dismissal of any Case, or the conversion of any Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal or conversion of any Case; or

(e) except the Orders, the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (i) to allow any creditor or other third party to proceed against, execute upon or enforce a Lien on, any material asset or assets of the Debtors, or (ii) with respect to any Lien of or the granting of any Lien on any DIP Collateral to any state or local environmental or regulatory agency or authority that would have a Material Adverse Effect or priority over any Lien of the Lenders; or

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

(g) the entry of an order in any of the Cases avoiding or requiring repayment of any portion of the payments made on account of the Obligations or the Prepetition Obligations; or

(h) the appointment of an interim or permanent trustee in any Case or the appointment of a receiver, responsible officer or an examiner in any Case with enlarged powers beyond the duty to investigate and report, as set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code; or

(i) without the consent of the Administrative Agent, the sale of all or substantially all of any Debtor's assets (either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in any Case, or otherwise) that does not provide for payment in full of the Obligations and termination of the Lenders' commitment to make Loans hereunder; or

(j) the entry of an order in any of the Cases granting any other superpriority administrative claim or Lien equal or superior to that granted to the Administrative Agent, on behalf of itself and the Lenders or to the Prepetition First Lien Agent, on behalf of the Prepetition First Lien Lenders (other than as expressly provided in the Order), or any Debtor shall file any pleading requesting such relief; or

(k) the payment of pre-petition claims without court order; or

(l) the filing of an objection or challenge by any party in interest in the Cases to

(i) the Administrative Agent's claims, Liens and security interests in respect of the Obligations or the DIP Collateral, or

(ii) the Prepetition First Lien Agent's claims, Liens and security interests in the Prepetition Collateral that is not dismissed or otherwise resolved in favor of the Prepetition First Lien Agent within thirty (30) days, except for any such filing by the official committee appointed in the Cases during the period approved by the Bankruptcy Court for its investigation of the Prepetition First Lien Agent's Liens and claims; or

(m) the proposal of any sale of all or substantially all of any Debtor's assets (either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Case, or otherwise) that does not preserve the Prepetition First Lien Agent's and the Prepetition First Lien Secured Parties' rights to credit bid their pre-petition claims; or

(n) the termination or modification of the Debtors' exclusivity as to the proposal of any plan of reorganization; or

- (o) the entry of any order directing Debtors to marshal any Collateral; or
- (p) any breach of the Restructuring Agreement by any party thereto other than the Administrative Agent and the Lenders (which breach, in the case of any such party other than the Secured Parties, shall not have been cured on or before the third (3rd) Business Day after the occurrence thereof) or any failure of the Restructuring Agreement to remain in full force and effect; or
- (q) the bringing or supporting of a motion or the filing of any plan of reorganization or disclosure statement attendant thereto by any Debtor seeking, or otherwise consenting to, any of the foregoing in any of the Cases.

SECTION 8.1.10 Impairment of DIP Collateral, etc. Any Loan Document, or any Lien granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective or cease to be the legally valid, binding and enforceable obligation of any Debtor, any Debtor shall, directly or indirectly, repudiate any Loan Document or contest in any manner such effectiveness, validity, binding nature or enforceability or, except as permitted under any Loan Document, any Lien securing any Obligation shall, in whole or in part, cease to be a perfected first priority Lien, except as otherwise permitted hereunder or as a result of any act or omission by the Administrative Agent or any Lender within the sole control of such Person.

SECTION 8.1.11 Government Authorizations. Any permits, certificates, approvals, licenses and other authorizations necessary for the operation of the Debtors' business as operated on the Closing Date shall expire or are earlier terminated by the issuing agency or Governmental Instrumentality or any order is issued by any Governmental Instrumentality having or asserting jurisdiction over the Debtors or the Debtors' business which is reasonably expected to result in a Material Adverse Effect.

SECTION 8.1.12 Material Adverse Effect. Any event or circumstance shall occur that could reasonably be expected to have a Material Adverse Effect.

SECTION 8.1.13 Exit Milestones. The failure of any of the following milestones to occur as set forth below (collectively, the "**Exit Milestones**"):

- (a) The Debtors shall file the Plan of Reorganization no later than seven (7) days after the Petition Date;
- (b) The Debtors shall file the disclosure statement (the "**Disclosure Statement**") no later than twenty one (21) days after the date of filing of the Plan of Reorganization;
- (c) The Bankruptcy Court shall have entered an order approving the Disclosure Statement no later than forty (40) days after the date of filing of the Disclosure Statement with the Bankruptcy Court;

(d) The Bankruptcy Court shall have commenced the confirmation hearing with respect to the Plan of Reorganization no later than forty (40) days after the date of entry of an order approving the Disclosure Statement by the Bankruptcy Court; and

(e) The Bankruptcy Court shall have entered an order confirming the Plan of Reorganization no later than June 15, 2011.

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

(a) exercise the right (after providing five (5) Business Days' prior notice to the Debtors and any statutory committee of the occurrence of the DIP Facility Termination Date) to realize on all Collateral without the necessity of obtaining any further relief or order from the Bankruptcy Court, subject to the right of the Debtors to seek continuation of the automatic stay during such five (5) Business Days' period; provided, that, any continuation of the automatic stay after such an Event of Default shall have no effect on the termination of the Debtors' use of Available Cash (including cash collateral) as a result of such Event of Default;

(b) suspend or terminate the Lenders' obligation to make additional Borrowings (other than Borrowings used solely to pay Post-trigger Carve-out Expenses), to process requests by the Borrower and to perform any other obligations of the Lenders which are expressly subject to there not being a Default under this Agreement shall be terminated;

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

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

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

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

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

Except as otherwise set forth herein, all sums expended by the Lenders for any of the purposes described above shall be deemed to have been advanced to the Borrower under and pursuant to the provisions of this Agreement, shall bear interest at the rate of interest set forth in Section 3.2.2 and shall be secured by the DIP Collateral. The Administrative Agent or the Lenders (or their nominee or designee) may at any time discontinue any action or remedy commenced by it or them, as the case may be, or change any course of action undertaken by it or them, and in such event, such Agent and the Lenders (or their nominee or designee) shall not be bound by any requirements or limitations of time contained in the Loan Documents. For the foregoing purposes, the Debtors, to the fullest extent permitted by law, hereby constitute and appoint the Administrative Agent (or its nominee or designee) as the true and lawful agent and attorney-in-fact of each such Person with full power of substitution and hereby empower the Administrative Agent (and its nominee or designee) to take such action and require such performance as it deems necessary or desirable. This agency and power of attorney shall be deemed to be coupled with an interest and shall be irrevocable.

ARTICLE IX

THE ADMINISTRATIVE AGENT

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

(a) Each Lender hereby designates BMO to act as the Administrative Agent under and for purposes of this Agreement and the other Loan Documents and authorizes BMO, in its capacity as the Administrative Agent, to act on behalf of such Lender under this Agreement and the other Loan Documents. Subject to the terms and conditions hereof, BMO accepts such appointment and agrees to act as the Administrative Agent on behalf of the Lenders and to perform the duties of the Administrative Agent in accordance with the provisions of this Agreement and the other Loan Documents. Each

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

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

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

SECTION 9.2 Funding Reliance, etc. Unless the Administrative Agent shall have been notified by telephone, confirmed in writing, by any Lender by 5:00 p.m., Chicago time, on the Business Day prior to a Borrowing that such Lender will not make available the amount which

would constitute its Percentage of such Borrowing on the date specified therefor, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent and, in reliance upon such assumption, make available to the Borrower a corresponding amount. If and to the extent that such Lender shall not have made such amount available to the Administrative Agent, such Lender and the Borrower severally agree to repay the Administrative Agent forthwith on demand such corresponding amount, together with interest thereon, for each day from the date the Administrative Agent made such amount available to the Borrower to the date such amount is repaid to the Administrative Agent, at the interest rate applicable at the time to Loans comprising such Borrowing in the case of the Borrower and at the Federal Funds Rate (in the case of a Lender) (for the first two (2) Business Days after which such amount has not been repaid) and thereafter at the interest rate applicable to Loans comprising such Borrowing. Nothing in this Section shall affect or impair the rights or remedies of the Borrower against such Lender so long as such amount and interest, if any, has been repaid by the Borrower to the Administrative Agent.

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

SECTION 9.4 Successors. The Administrative Agent may resign as such at any time upon at least 30 days' prior notice to the Borrower and all Lenders. If the Administrative Agent

at any time shall resign, the Required Lenders may appoint another Lender as a successor Administrative Agent which shall thereupon become the Administrative Agent hereunder subject to the Borrower's reasonable consent so long as no Event of Default has occurred and is continuing. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be one of the Lenders or a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, and having a combined capital and surplus of at least \$250,000,000; provided that, if, such retiring Administrative Agent is unable to find a commercial banking institution which is willing to accept such appointment and which meets the qualifications set forth in above, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor as provided for above. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall be entitled to receive from the retiring Administrative Agent such documents of transfer and assignment as such successor Administrative Agent may reasonably request, and shall thereupon succeed to and become vested with all rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under the Loan Documents, and Section 9.3 and Section 9.4 shall continue to inure to its benefit.

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

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

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

SECTION 9.8 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telecopy, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Administrative Agent. As to any matters not expressly provided for by the Loan Documents, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, thereunder in accordance with instructions given by the Required Lenders or all of the Lenders as is required in such circumstance, and such instructions of such Lenders and any action taken or failure to act pursuant thereto shall be binding on all Secured Parties.

SECTION 9.9 Defaults. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default unless the Administrative Agent has received a written notice from a Lender or the Borrower specifying such Default and stating that such notice is a "Notice of Default". In the event that the Administrative Agent receives such a notice of the occurrence of a Default, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall (subject to Section 12.1) take such action with respect to such Default as shall be directed by the Required Lenders; provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the best interest of the Secured Parties except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of the Required Lenders or all Lenders.

SECTION 9.10 Sharing of Information. The Administrative Agent shall have the option, but not the obligation, to share all information delivered by the Borrower pursuant to Section 7.1.1 with the Prepetition First Lien Agent and the Prepetition First Lien Lenders.

ARTICLE X

DIP COLLATERAL

SECTION 10.1 Grant of Liens; Collateral.

(a) Pursuant to Bankruptcy Code Section 364(c)(1), the Administrative Agent and the Lenders have been granted a superpriority administrative claim over any and all administrative claims of the type specified in Bankruptcy Code Sections 503(b) and 507(b). As collateral for the Loans and security for the full and timely payment and

performance of all Obligations when due (whether at stated maturity, by acceleration or otherwise), the Administrative Agent, for the benefit of the Lenders, is hereby granted (i) pursuant to Section 364(c)(2) of the Bankruptcy Code, a perfected first priority Lien on all assets of the Debtors that are unencumbered as of the commencement of the Cases (other than Avoidance Actions) and all proceeds therefrom; (ii) pursuant to Section 364(c)(3) of the Bankruptcy Code, a perfected Lien on all other assets of the Debtors (other than the assets referred to in the following clause (iii) and other than Avoidance Actions), junior only to the valid, perfected and non-avoidable Liens on such assets as of the Petition Date and to valid Liens in existence at the time of such commencement that are perfected subsequent to such commencement as permitted by Section 546(b) of the Bankruptcy Code and all proceeds therefrom; (iii) pursuant to Section 364(d)(1) of the Bankruptcy Code, a perfected senior priming Lien on all of the Debtors' assets that are subject to the Liens of (A) the Prepetition First Lien Agent and the Prepetition First Lien Lenders under the Prepetition First Lien Credit Agreement and (B) the Prepetition Second Lien Agent and the Prepetition Second Lien Lenders under the Prepetition Second Lien Credit Agreement, subject only to any valid, perfected and non-avoidable Liens held by parties other than the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders; and (iv) subject to any valid pre-petition Liens other than Liens granted under the Prepetition First Lien Loan Documents and the Prepetition Second Lien Loan Documents, pursuant to Sections 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 503(b) of the Bankruptcy Code, a claim and Liens on any pre-petition and post-petition improvements (all of which being hereinafter collectively referred to as the **"DIP Collateral"**).

(b) The superpriority claims of the Administrative Agent and the Lenders hereunder shall at all times (i) be senior to the rights of the Debtors, any Chapter 11 trustee and any Chapter 7 trustee, or any creditor (including, without limitation, post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including, without limitation, any Chapter 7 cases if any of the Cases are converted to cases under Chapter 7 of the Bankruptcy Code, and (ii) be payable from, and have recourse to, all pre-petition and post-petition assets of the respective Debtors and all proceeds thereof, including Avoidance Actions.

SECTION 10.2 No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim Order and, when applicable, the Final Order. The Administrative Agent shall not be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this Agreement, any other Loan Document or the Orders.

SECTION 10.3 Adequate Protection. The Prepetition First Lien Agent, the Prepetition First Lien Lenders and the Prepetition First Lien Secured Parties have been granted adequate protection in accordance with the Orders to the extent of any diminution in the value of the Prepetition Collateral as of the Petition Date, including but not limited to any diminution in value resulting from (i) the use of the Prepetition Cash Collateral pursuant to Bankruptcy Code Section 363(a), (ii) the use, sale or lease of Prepetition Collateral (other than the Prepetition Cash Collateral) pursuant to Bankruptcy Code Section 363(c), (iii) the grant of the priming liens to the

Lenders under Bankruptcy Code Section 364(d), or (iv) the imposition of the automatic stay pursuant to Bankruptcy Code Section 362(a), in the form of (a) the reimbursement of all reasonable and documented fees and expenses incurred by professionals for the Prepetition First Lien Agent including, without limitation, the reasonable disbursements of counsel and any financial consultant, advisor or expert advising the Prepetition First Lien Agent, (b) a Lien immediately junior only to the Lien granted to the Administrative Agent and the Lenders on the DIP Collateral, (c) a superpriority claim under Section 507(b) of the Bankruptcy Code, (d) completion of the Exit Milestones and (e) credit bidding rights in favor of the Prepetition First Lien Agent and the Prepetition First Lien Lenders in connection with the sale of any of the Debtors' assets, whether conducted pursuant to Section 363 or Section 1129(b)(2)(A) of the Bankruptcy Code or otherwise.

ARTICLE XI

GUARANTY

SECTION 11.1 Guaranty. To induce the Lenders to provide the credits described herein and in consideration of benefits expected to accrue to the Borrower by reason of the Commitments and for other good and valuable consideration, receipt of which is hereby acknowledged, each Guarantor party hereto hereby unconditionally and irrevocably guarantees jointly and severally to the Administrative Agent and the Lenders, the due and punctual payment of all present and future Obligations, including, but not limited to, the due and punctual payment of principal of and interest on the Loans and the due and punctual payment of all other Obligations now or hereafter owed by the Borrower under the Loan Documents, in each case as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, according to the terms hereof and thereof (including interest as set forth in the Orders). In case of failure by the Borrower punctually to pay any Obligations guaranteed hereby, each Guarantor hereby unconditionally agrees to make such payment or to cause such payment to be made punctually as and when the same shall become due and payable, whether at stated maturity, by acceleration, or otherwise, and as if such payment were made by the Borrower, it being agreed that this is a guaranty of payment as opposed to a guaranty of collection.

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

- (a) any extension, renewal, settlement, compromise, waiver, or release in respect of any obligation of any Debtor under this Agreement or any other Loan Document or by operation of law or otherwise;
- (b) any modification or amendment of or supplement to this Agreement or any other Loan Document;
- (c) any change in the corporate existence, structure, or ownership of any of the Debtors, or any of their respective assets, or any resulting release or discharge of any obligation of any Debtor contained in any Loan Document;

(d) the existence of any claim, set-off, or other rights which any Debtor may have at any time against the Administrative Agent, any Lender, or any other Person, whether or not arising in connection herewith;

(e) any failure to assert, or any assertion of, any claim or demand or any exercise of, or failure to exercise, any rights or remedies against any Debtor, or any other Person or Property;

(f) any application of any sums by whomsoever paid or howsoever realized to any obligation of the Debtors, regardless of what obligations of the Debtors remain unpaid;

(g) any invalidity or unenforceability relating to or against any Debtor for any reason of this Agreement or of any other Loan Document or any provision of applicable law or regulation purporting to prohibit the payment by any Debtor of the principal of or interest on any Loan or any other amount payable under the Loan Documents; or

(h) any other act or omission to act or delay of any kind by the Administrative Agent, any Lender, or any other Person or any other circumstance whatsoever (other than the indefeasible payment in cash of all of the Obligations) that might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the obligations of any Guarantor under this Article XI, other than payment in full of the Obligations.

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

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

SECTION 11.5 Waivers. Each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, and any notice not provided for herein, as well as any requirement

that at any time any action be taken by the Administrative Agent, any Lender, or any other Person against any Debtor or any other Person.

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

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

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

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

ARTICLE XII

MISCELLANEOUS PROVISIONS

SECTION 12.1 Waivers, Amendments, etc. The provisions of this Agreement and of each other Loan Document may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and consented to by the Borrower and the Required Lenders; provided, however, that no such amendment, modification or waiver shall:

- (a) modify Section 4.7, Section 4.8 (as it relates to sharing of payments) or this Section, in each case, without the consent of all Lenders;
- (b) increase the aggregate amount of any Loans required to be made by a Lender pursuant to its Commitments, extend the Commitment Termination Date of Loans made (or participated in) by a Lender, in each case without the prior written consent of such Lender (it being agreed, however, that any vote to rescind any acceleration made pursuant to Section 8.2 of amounts owing with respect to the Loans and other Obligations shall only require the vote of the Required Lenders);
- (c) reduce (by way of forgiveness), the principal amount of or reduce the rate of interest on any Lender's Loan, reduce any fees described in Article III payable to any Lender or extend the date on which interest or fees are payable in respect of such

Lender's Loans, in each case without the prior written consent of such Lender (provided that, the vote of Required Lenders shall be sufficient to waive the payment, or reduce the increased portion, of interest accruing under Section 3.2.2);

(d) reduce the percentage set forth in the definition of "Required Lenders" or modify any requirement hereunder that any particular action be taken by all Lenders without the consent of all Lenders;

(e) except as otherwise expressly provided in a Loan Document, release (i) any Debtor from its Obligations under the Loan Documents or (ii) all or substantially all of the collateral under the Loan Documents, in each case without the consent of all Lenders; or

(f) affect adversely the interests, rights or obligations of the Administrative Agent (in its capacity as the Administrative Agent), unless consented to by the Administrative Agent.

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

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

SECTION 12.3 Payment of Costs and Expenses. The Borrower agrees to pay on demand from the Administrative Agent and without application to the Bankruptcy Court, all reasonable and documented out-of-pocket expenses of the Administrative Agent (including the reasonable fees, charges, disbursements and expenses of its advisors (including Macquarie) and of its counsel (including Mayer Brown LLP, special counsel to the Administrative Agent, Womble Carlyle Sandridge & Rice, PLLC, special Delaware counsel to the Administrative Agent, and any local counsel retained by the Administrative Agent) in connection with

(a) the negotiation, preparation, execution, delivery and administration of this Agreement and of each other Loan Document, including schedules and exhibits, and any amendments, waivers, consents, supplements or other modifications to this Agreement or any other Loan Document as may from time to time hereafter be required, whether or not the transactions contemplated hereby are consummated;

(b) the syndication of the DIP Facility;

(c) the filing, recording, refiling or rerecording of any Loan Document or any Uniform Commercial Code financing statements relating thereto and all amendments, supplements, amendments and restatements and other modifications to any thereof and any and all other documents or instruments of further assurance required to be filed or recorded or refiled or rerecorded by the terms hereof or the terms of any Loan Document;

(d) the enforcement of this Agreement or any other Loan Document; and

(e) the preparation and review of the form of any document or instrument relevant to this Agreement or any other Loan Document;

(f) the Administrative Agent's active participation in the Bankruptcy Court proceedings; and

(g) the preparation of any information or response required with respect to any investigative request or inquiry, approval, findings of suitability or any other response or communication involving a Governmental Instrumentality arising out of this Agreement, any other Loan Documents or any Obligation evidenced and secured by the Loan Documents or the participation in any public or investigatory hearing or meeting.

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

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of any Loan, or the use or the proposed use of such proceeds;

(b) the entering into and performance of this Agreement and any other Loan Document by any of the Indemnified Parties (including any action brought by or on behalf of any Debtor as the result of any determination by the Required Lenders pursuant to Article V not to fund any Loans; provided, however, that any such action is resolved in favor of such Indemnified Party);

(c) any investigation, litigation or proceeding related to any acquisition or proposed acquisition by any Debtor of all or any portion of the stock or assets of any Person, whether or not the Administrative Agent or any Lender is party thereto;

(d) any investigation, litigation or proceeding related to any environmental cleanup, audit, compliance or other matter relating to the protection of the environment or the Release by any Debtor;

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

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

except for any such Indemnified Liabilities arising for the account of a particular Indemnified Party by reason of the relevant Indemnified Party's gross negligence or willful misconduct. The Borrower and its successors and assigns hereby waive, release and agree not to make any claim or bring any cost recovery action against the Administrative Agent or any Lender under CERCLA or any state equivalent, or any similar law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that any of the Indemnified Parties is strictly liable under any Environmental Laws, the Borrower's obligation to such Person under this indemnity shall likewise be without regard to fault on the part of the Borrower with respect to the violation or condition which results in liability of such Person. If and to the extent that the foregoing undertaking may be unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law.

SECTION 12.5 Survival. The obligations of the Borrower under Sections 4.3, 4.4, 4.5, 4.6, 12.3 and 12.4, and the obligations of the Lenders under Section 9.1, shall, in each case, survive any assignment from one Lender to another (in the case of Sections 12.3 and 12.4) and any termination of this Agreement, the payment in full of all the Obligations and the termination of all the Commitments, provided that all of the obligations of the Debtors under this Agreement

and the Loan Documents shall terminate on the Discharge Date. The representations and warranties made by each Debtor in this Agreement and in each other Loan Document shall survive the execution and delivery of this Agreement and each such other Loan Document (but the Debtors' respective obligations in respect thereof shall terminate on the Discharge Date).

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

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

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

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

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

(a) the Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of the Administrative Agent and all Lenders; and

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

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

(a) Subject to clause (b), any Lender may assign to one or more Eligible Assignees (each Person described in either of the foregoing clauses as being the Person to whom such assignment and delegation is to be made, being hereinafter referred to as an “**Assignee Lender**”) all or a portion of its rights and obligations under the Loan Documents (including all or a portion of its Commitments and the Loans at the time owing to it); provided that:

(i) except in the case of (A) an assignment of the entire remaining amount of the assigning Lender’s Commitments and the Loans at the time owing to it or (B) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitments (which for this purpose includes Loans outstanding thereunder) or principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Lender Assignment Agreement with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000 for all Loans, unless the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower, otherwise consent;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans and the Commitments assigned; and

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent a Lender Assignment Agreement, together with a processing and recordation fee of \$3,500 (except if the Eligible Assignee is already a Lender or an Affiliate or Approved Fund of the assigning Lender) and if the Eligible Assignee is not already a Lender, administrative details information with respect to such Eligible Assignee and applicable tax forms.

(b) Any assignment proposed pursuant to clause (a) to any Person (other than a Lender or an Approved Fund) shall be subject to the prior written approval of (i) the Administrative Agent (not to be unreasonably withheld or delayed) and (ii) so long as no Event of Default has occurred and is continuing on the date such assignment is to become effective, the Borrower (not to be unreasonably withheld or delayed). If the consent of the Borrower to an assignment or to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified in this Section), the Borrower shall be deemed to have given its consent ten (10) Business Days after the date notice thereof has been delivered by the assigning Lender (through the Administrative Agent) to the Borrower, unless such consent is expressly refused by the Borrower prior to such tenth Business Day.

(c) Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (d), from and after the effective date specified in each Lender

Assignment Agreement, (i) the Eligible Assignee thereunder shall (if not already a Lender) be a party hereto and, to the extent of the interest assigned by such Lender Assignment Agreement, have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender thereunder shall (subject to Section 12.5) be released from its obligations under the Loan Documents, to the extent of the interest assigned by such Lender Assignment Agreement (and, in the case of a Lender Assignment Agreement covering all of the assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto, but shall (as to matters arising prior to the effectiveness of the Lender Assignment Agreement) continue to be entitled to the benefits of any provisions of the Loan Documents which by their terms survive the termination of this Agreement). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with the terms of this Section shall be treated for purposes of the Loan Documents as a sale by such Lender of a participation in such rights and obligations in accordance with clause (e).

(d) The Administrative Agent shall record each assignment made in accordance with this Section in the Register pursuant to Section 2.5. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time upon reasonable prior notice to the Administrative Agent.

(e) Any Lender may, without the consent of, or notice to, any Person, sell participations to one or more Persons (other than individuals) (a "**Participant**") in all or a portion of such Lender's rights or obligations under the Loan Documents (including all or a portion of its Commitments or the Loans owing to it); provided that, (i) such Lender's obligations under the Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents and (iv) such Lender that sells a participating interest in any Loan to a Participant shall, as agent of the Borrower solely for the purpose of this Section 12.11(e), record in book entries maintained by such Lender the name and the amount of the participating interest of each Participant entitled to receive payments in respect of such participating interests. Any agreement or instrument pursuant to which a Lender sells a participation shall provide that such Lender shall retain the sole right to enforce the rights and remedies of a Lender under the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, take any action of the type described in clauses (a) through (d) or clause (f) of Section 12.1 with respect to Obligations participated in by that Participant. Subject to clause (f), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.3, 4.4, 4.5, 4.6, 7.1.1, 12.3 and 12.4 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (c), but only if such Participant also agrees to be bound by the terms of Section 4.10 as though it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 4.9 as though it were a Lender, but only if such Participant agrees to be subject to Section 4.8 as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 4.3, 4.4, 4.5, 4.6, 12.3 or 12.4 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. A Participant that would be a Non-U.S. Secured Party if it were a Lender shall not be entitled to the benefits of Section 4.6 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with the requirements set forth in Section 4.6 as though it were a Lender. Any Lender that sells a participating interest in any Loan, Commitment or other interest to a Participant under this Section shall indemnify and hold harmless the Borrower and the Administrative Agent from and against any taxes, penalties, interest or other costs or losses (including reasonable attorneys' fees and expenses) incurred or payable by the Borrower or the Administrative Agent as a result of the failure of the Borrower or the Administrative Agent to comply with its obligations to deduct or withhold any Taxes from any payments made pursuant to this Agreement to such Lender or the Administrative Agent, as the case may be, which Taxes would not have been incurred or payable if such Participant had been a Non-U.S. Lender that was entitled to deliver to the Borrower, the Administrative Agent or such Lender, and did in fact so deliver, a duly completed and valid Form W-8BEN or W-8ECI (or applicable successor form) entitling such Participant to receive payments under this Agreement without deduction or withholding of any United States federal taxes.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement 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 of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

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

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

SECTION 12.14 Waiver of Jury Trial. THE ADMINISTRATIVE AGENT, THE LENDERS, THE BORROWER AND EACH GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR

IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS, THE BORROWER OR THE GUARANTORS IN CONNECTION HERewith OR THEREWITH. THE BORROWER AND EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF EACH OTHER LOAN DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT AND EACH SUCH OTHER LOAN DOCUMENT.

SECTION 12.15 Maximum Rate of Interest. Nothing contained in this Agreement or in any other Loan Documents shall be construed to permit the Lenders to charge or receive at any time interest, fees or other charges in excess of the amounts which the Lenders are legally entitled to charge and receive under any law to which such interest, fees or charges are subject. In no contingency or event whatsoever shall the compensation payable to the Lenders by any Person, howsoever characterized or computed, hereunder or under any of the other Loan Documents, exceed the highest rate permissible under any law to which such compensation is subject. There is no intention that the Lenders shall contract for, charge or receive compensation in excess of the highest lawful rate, and, in the event it should be determined that the Lenders have contracted for any rate of interest in excess of the highest lawful rate, then ipso facto such rate shall be reduced to the highest lawful rate so that no amounts shall be charged or received which are in excess thereof, and, in the event it should be determined that any excess over such highest lawful rate has been charged or received, the Lenders shall promptly refund such excess to the Person entitled thereto; provided, however, that, if lawful, any such excess shall be paid by the Borrower to the Lenders as additional interest (accruing at a rate equal to the maximum legal rate minus the rate provided for hereunder) during any subsequent period when regular interest is accruing hereunder at less than the maximum legal rate.

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

SECTION 12.17 Consent or Approval of the Administrative Agent and the Lenders. No claims may be made by the Borrower or any other Person against the Administrative Agent, the Lenders, any Affiliate of the foregoing, or the officers, directors, employees, attorneys, consultants or agents of any of them for consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or by the other Loan Documents, or an act, omission, or event occurring in connection therewith; and each Borrower, for itself and for all Persons claiming by, through and under it, waives, releases, and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

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

SECTION 12.19 Cumulative Remedies. No right or remedy conferred upon the Administrative Agent or the Lenders in this Agreement is intended to be exclusive of any other right or remedy contained in the other Loan Documents or at law and equity and every such right and remedy shall be cumulative and shall be in addition to every other right or remedy contained in the other Loan Documents and as now or hereafter available to the Lenders at law or in equity, by statute or otherwise.

SECTION 12.20 Release. Each Debtor hereby forever, absolutely, unconditionally, automatically and completely releases and discharges the Prepetition First Lien Agent, the Prepetition First Lien Lenders and the Prepetition First Lien Secured Parties, their former and current affiliates and their respective officers, directors, employees, advisors and agents (collectively, the “**Released Parties**”) from and against any and all actual, threatened or potential claims, suits, proceedings, actions, causes of action, demands, liabilities, losses, obligations, orders, requirements or restrictions or directives of any governmental entity, liens, penalties, fines, charges, debts, damages, costs, and expenses of every kind and nature, whether now known or unknown, where foreseeable or unforeseeable, whether under any foreign, federal, state or local law (both statutory and nonstatutory), whether asserted directly or indirectly by or through any Debtor, that any Debtor may now have against any of the Released Parties relating to the Prepetition Obligations or the Prepetition First Lien Loan Documents.

SECTION 12.21 Counsel Representation. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS BEEN REPRESENTED BY COMPETENT COUNSEL IN THE NEGOTIATION OF THIS AGREEMENT, AND THAT ANY RULE OR CONSTRUCTION OF LAW ENABLING SUCH PERSON TO ASSERT THAT ANY AMBIGUITIES OR INCONSISTENCIES IN THE DRAFTING OR PREPARATION OF THE TERMS OF THIS AGREEMENT SHOULD DIMINISH ANY RIGHTS OR REMEDIES OF ANY OTHER PERSON ARE HEREBY WAIVED.

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

[No further text]

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

BORROWER:

**THE NATIONAL UNDERWRITER
COMPANY**, as a debtor and debtor-in-possession

By: _____
Thomas M. Flynn
Chief Financial Officer

Address for Notices:

5081 Olympic Boulevard
Erlanger, KY 41018
Facsimile: (859) 692-2000
Attention: Chief Financial Officer

with a copy to:

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022
Facsimile: (212) 521-5450
Attention: J. Andrew Rahl

GUARANTORS:

SUMMIT BUSINESS MEDIA HOLDING COMPANY, as a debtor and debtor-in-possession

SUMMIT BUSINESS MEDIA INTERMEDIATE HOLDING COMPANY, LLC, as a debtor and debtor-in-possession

RESEARCH HOLDINGS, LTD., as a debtor and debtor-in-possession

FUTURES MAGAZINE, INC., as a debtor and debtor-in-possession

JUDY DIAMOND ASSOCIATES, INC., as a debtor and debtor-in-possession

AGENT MEDIA CORPORATION, as a debtor and debtor-in-possession

MINING INDABA, LLC, as a debtor and debtor-in-possession

NUCO BUSINESS INFORMATION, LLC, as a debtor and debtor-in-possession

By: _____
Thomas M. Flynn
Chief Financial Officer

Address for Notices:

5081 Olympic Boulevard
Erlanger, KY 41018
Facsimile: (859) 692-2000
Attention: Chief Financial Officer

with a copy to:

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022
Facsimile: (212) 521-5450
Attention: J. Andrew Rahl

ADMINISTRATIVE AGENT:

BANK OF MONTREAL, CHICAGO BRANCH,
as the Administrative Agent

By: _____
James A. Jerz
Vice President

Address for Notices:

Bank of Montreal, Chicago Branch
115 S. LaSalle Street, 12 West
Chicago, Illinois 60603
Facsimile: (312) 461-7958
Attention: James A. Jerz

with a copy to:

Mayer Brown LLP
1675 Broadway
New York, New York 10019
Facsimile: (212) 849-5630
Attention: David K. Duffee, Esq.

LENDERS:

NEWSTAR LOAN FUNDING, LLC, as a Lender

By: NewStar Financial, Inc., its Manager

By: _____
Robert Hornstein
Managing Director

Address for Notices:

NewStar Loan Funding, LLC
500 Boylston Street
Boston, Massachusetts 02116
Facsimile: (214) 291-4347
Attention: Operations

Commitment Amount:	\$2,375,000.00
Percentage of Commitment Amount:	47.50%

**GENERAL ELECTRIC CAPITAL
CORPORATION**, as a Lender

By: _____
Drew D. Miller
Duly Authorized Signatory

Address for Notices:

General Electric Capital Corporation
2325 Lakeview Parkway, Suite 700
Alpharetta, Georgia 30009
Facsimile: (678) 624-7903
Attention: Summit Business Media Account
Manager

Commitment Amount:	\$1,250,000.00
Percentage of Commitment Amount:	25.00%

BANK OF MONTREAL, CHICAGO BRANCH,
as a Lender

By: _____
James A. Jerz
Vice President

Address for Notices:

Bank of Montreal, Chicago Branch
115 S. LaSalle Street, 12 West
Chicago, Illinois 60603
Facsimile: (312) 461-7958
Attention: James A. Jerz

Commitment Amount:	\$625,000.00
Percentage of Commitment Amount:	12.50%

FIRSTLIGHT FINANCIAL CORPORATION,
as a Lender

By: _____
Name:
Title:

Address for Notices:

FirstLight Financial Corporation
280 Park Avenue, 28th Floor
New York, New York 10017
Facsimile: (646) 259-4820
Attention: Ruth Molina

Commitment Amount:	\$625,000.00
Percentage of Commitment Amount:	12.50%

ECP CREDIT LLC, as a Lender

By: ECP Credit MM, LLC, its Manager

By: _____
Steven Friedman
Director

Address for Notices:

ECP Credit LLC
c/o Eos Partners, L.P.
320 Park Avenue, 9th Floor
New York, New York 10022
Facsimile: (212) 593-4033
Attention: Peter J. Park

Commitment Amount:	\$125,000.00
Percentage of Commitment Amount:	2.50%

SCHEDULE I

DISCLOSURE SCHEDULE TO THE CREDIT AGREEMENT

ITEM 6.8	Litigation, Labor Controversies, etc.
ITEM 6.13	Environmental Warranties
ITEM 6.14	Intellectual Property
ITEM 6.22	Debtor Locations; FEIN
ITEM 6.24	Subsidiaries
ITEM 7.2.2	Existing Indebtedness
ITEM 7.2.3	Existing Liens
ITEM 7.2.4	Existing Investments
ITEM 7.2.9	Executory Contracts and Leases to be Rejected
ITEM 7.2.10	Transactions with Affiliates

Item 6.8

Litigation, Labor Controversies, etc.

None.

Item 6.13

Environmental Warranties

None.

Item 6.14

Intellectual Property

TRADEMARK	REGISTRATION #	APPLICATION #	COUNTRY	GOODS/SERVICES
MINING INDABA	--	2009/17071	SOUTH AFRICA	Conferences including conferences for natural resources professionals (Cl. 41)

Item 6.22

Location, FEIN

Entity	Location	Federal Employer Identification Number
Summit Business Media Intermediate Holding Company, LLC	Delaware	51-0605392
Summit Business Media Holding Company	Delaware	20-5605547
The National Underwriter Company	Ohio	31-0388770
Research Holdings, LTD	California	94-2945228
Futures Magazine, Inc.	Illinois	65-1224726
Judy Diamond Associates, Inc.	District of Columbia	52-1440517
Agent Media Corporation	Florida	75-2343991
Mining INDABA, LLC	Delaware	27-0394592
NUCO Business Information, LLC	Delaware	13-4067364

Item 6.24

Subsidiaries

Summit Business Media Holding Company, a Delaware corporation

The National Underwriter Company, an Ohio corporation

Research Holdings, Ltd., a California corporation

Futures Magazine, Inc., an Illinois corporation

Judy Diamond Associates, Inc., a District of Columbia corporation

Agent Media Corporation, a Florida corporation

Mining INDABA, LLC, a Delaware limited liability company

NUCO Business Information, LLC, a Delaware limited liability company

Item 7.2.2

Indebtedness

Indemnification Agreement dated as of November 3, 2006 by and between Summit Business Media, LLC and Pfingsten Publishing, L.L.C.

ISDA Agreement by and between Bank of America Merrill Lynch and Summit Business Media Intermediate Holding Company, LLC with a reference number of 3704257A/07DL24300.

Indebtedness owed by The National Underwriter Company to De Lage Landen Financial Services, Inc. related to certain equipment.

Indebtedness owed by The National Underwriter Company to US Bancorp related to certain equipment.

Item 7.2.3

Liens

Liens with respect to indebtedness owed by The National Underwriter Company to De Lage Landen Financial Services, Inc. related to certain equipment as further described in that certain UCC financing statement filed as OH00111588715 with the Ohio Secretary of State.

Liens with respect to indebtedness owed by The National Underwriter Company to US Bancorp related to certain equipment as further described in that certain UCC financing statement filed as OH00129704692 with the Ohio Secretary of State.

Item 7.2.4

Investments

None.

Item 7.2.9

Restrictions on Dispositions

Executory Contracts and Leases of Personal Property to be Rejected

Contract	Description of Contract	Contract Date Balance due 12/1/10
Letter Agreement by and between Anthony C. Reilly and Summit Business Media Holding Company, effective as of January 1, 2009, as the same may have been amended	Director Contract	Annual \$20,000 Balance due \$5000 01/2011
Letter Agreement by and between Efrem "Skip" Zimbalist III and Summit Business Media Holding Company, dated on or about January, 2007, as the same may have been amended	Director Contract	Annual \$25,000 Balance due \$6250 01/2011
HFS Lease Agreement by and between Hasler Financial Services, LLC and Agent Media Corporation dated as of February 10, 2010, as the same may have been amended	Postage Machine Lease	Expires 5/10/15 Balance due \$13,068
Letter Agreement by and between James M. Alic and Summit Business Media Holding Company, dated as of November 5, 2008, as the same may have been amended	Director Contract	Annual \$50,000 Balance due \$4167 12/2010
Letter of Agreement by and between Robert R. Tyndall and The National Underwriter Company, dated as of March 26, 2009, as the same may have been amended	Consultant Contract	Expires 12/31/10 Balance due \$5000.00
Lease Agreement by and between Northern Business System and Extreme Enterprises Institute, LLC, dated as of March 14, 2005, as the same may have been amended	Copier Lease	Expired Month to Month lease \$830

Leases of Non-Residential Real Property to be Rejected

Lessor	Leased Location	Remaining Balance
Lease by and between Connecticut General Life Insurance Company and Pfingsten Publishing, L.L.C., dated as of May 3, 2004, as the same may have been amended	1801 Park 270 Drive; Ste. 550 St. Louis, MO 63146	Remaining balance \$487,663 (24 mos @\$20,319.19)
Lease by and between Dolphinshire L.P. and Pfingsten Publishing, LLC, dated as of October 25, 2000, as the same may have been amended	3990 Old Town Ave Suite A203 San Diego, CA 92110	Expires 11/30/10
Standard Office Lease by and between Teachers Insurance And Annuity Association of America and The National Underwriter Company, dated as of May 23, 2007, as the same may have been amended	88 Kearney Street Suite 1800 San Francisco, CA 94108	Remaining balance \$308,206

Item 7.2.10

Transactions with Affiliates

None.

FORM OF INTERIM ORDER

BUDGET

Week beginning (Saturday)	January 2011		February 2011				March 2011				April 2011			
	15-Jan	22-Jan	29-Jan	5-Feb	12-Feb	19-Feb	26-Feb	5-Mar	12-Mar	19-Mar	26-Mar	2-Apr	9-Apr	16-Apr
Week ending (Friday)	21-Jan	28-Jan	4-Feb	11-Feb	18-Feb	25-Feb	4-Mar	11-Mar	18-Mar	25-Mar	1-Apr	8-Apr	15-Apr	22-Apr
WEEKLY RECEIPTS & DISBURSEMENT FORECAST														
RECEIPTS														
All Divisions	1,096,433	1,096,433	1,155,046	1,135,046	1,335,046	1,365,046	1,371,852	1,371,852	1,371,852	1,371,852	1,371,852	1,382,583	1,372,403	1,281,390
Extraordinary Items														
Total receipts	1,096,433	1,096,433	1,155,046	1,135,046	1,335,046	1,365,046	1,371,852	1,371,852	1,371,852	1,371,852	1,371,852	1,382,583	1,372,403	1,281,390
DISBURSEMENTS														
Operating needs														
Salaries, OT, and Payroll taxes	421,565	2,131,858	97,600	-	131,000	2,300,000	93,000	-	115,000	-	2,317,000	116,000	99,000	1,730,000
Recurring Contractual Payments	19,600	180,000	129,100	413,100	-	-	176,000	-	20,000	-	153,000	10,000	28,000	-
Fringe Payments	13,900	23,300	457,200	6,500	6,000	6,000	372,000	6,000	6,000	6,000	6,000	372,000	6,000	6,000
Board Expenses	-	5,000	4,000	4,200	-	-	-	4,200	-	1,195	4,000	-	11,250	-
Income Taxes	-	-	-	-	-	6,500	60,300	-	81,400	-	-	-	-	-
Trade Payables	573,000	-	1,094,000	535,000	846,950	772,700	736,000	682,000	306,050	318,300	536,000	536,000	538,000	466,000
Critical Vendors	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non Critical Vendors	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contract Vendors	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wire Payments, Utility Security Deposits	75,000	50,000	25,000	25,000	-	-	-	-	-	-	-	-	-	-
Postage	136,400	107,000	50,000	25,900	56,500	170,900	60,500	44,500	29,500	113,600	84,700	63,400	27,300	77,700
Prepaid Show Expenses	255,781	-	125,233	34,850	45,931	37,932	90,714	30,000	97,450	36,450	50,950	10,000	10,000	54,000
Taxes - other	130,000	-	-	86,800	24,400	168,000	-	40,600	-	-	76,948	25,200	67,700	-
Insurance	-	-	10,679	-	-	-	10,679	-	-	-	-	10,679	-	-
Previous Weeks Checks to Clear														
Check Float														
Investment needs														
Capital Spending	-	97,400	-	-	40,000	-	-	-	-	265,000	-	-	-	192,000
Financing needs														
Interest, First Lien	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest, Hedge	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Interest	-	3,888	-	-	-	7,776	-	-	-	-	9,720	-	-	7,776
Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Flow Sweep	-	-	-	-	-	-	-	-	-	-	-	-	-	-
One-time & extraordinary needs														
Consulting, Legal and Bank Expenses	1,400,000	145,000	-	-	550,000	-	-	-	-	550,000	-	-	-	1,270,000
Severance Expense	-	18,758	-	-	-	20,000	-	-	-	-	20,000	-	-	20,000
Total disbursements	3,025,246	2,762,204	1,992,812	1,131,350	1,700,781	3,489,808	1,599,193	807,300	655,400	1,290,545	3,258,318	1,143,279	787,250	3,795,700
Cash flow before revolver activity	(1,928,814)	(1,665,772)	(837,766)	3,696	(365,735)	(2,124,762)	(227,341)	564,552	716,452	81,307	(1,886,466)	239,304	585,153	(2,514,310)
DEBT SCHEDULE														
Cash balance calculation:														
Beginning cash balance	14,193,733	12,264,919	10,599,148	9,761,381	9,765,077	9,399,342	7,274,579	7,047,239	7,611,791	8,328,243	8,409,551	6,523,085	6,762,389	7,347,541
Cash flow before revolver activity	(1,928,814)	(1,665,772)	(837,766)	3,696	(365,735)	(2,124,762)	(227,341)	564,552	716,452	81,307	(1,886,466)	239,304	585,153	(2,514,310)
Cash position, ex-revolver	12,264,919	10,599,148	9,761,381	9,765,077	9,399,342	7,274,579	7,047,239	7,611,791	8,328,243	8,409,551	6,523,085	6,762,389	7,347,541	4,833,231
Draw / (payment) on revolver	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DIP Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending cash balance	12,264,919	10,599,148	9,761,381	9,765,077	9,399,342	7,274,579	7,047,239	7,611,791	8,328,243	8,409,551	6,523,085	6,762,389	7,347,541	4,833,231
DIP Facility Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-

FORM OF LENDER ASSIGNMENT AGREEMENT

_____, 20____

To: The National Underwriter Company
as Borrower
5081 Olympic Boulevard
Erlanger, Kentucky 41018
Attention: Chief Financial Officer

Bank of Montreal, Chicago Branch,
as Administrative Agent
115 South LaSalle Street, 12 West
Chicago, Illinois 60603
Attention: James A. Jerz

THE NATIONAL UNDERWRITER COMPANY

Gentlemen and Ladies:

This Lender Assignment Agreement (this “**Assignment and Acceptance**”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “**Assignor**”) and [*Insert name of Assignee*] (the “**Assignee**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to be incorporated herein by reference and made a part of this Assignment and Acceptance.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights, benefits, obligations, liabilities and indemnities in its capacity as a Lender under (and in connection with) the Credit Agreement and any other Loan Documents to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below (including without limitation any guarantees and Exit Fee (if any) included in such facility) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, the other Loan Documents or in any way based on or related to any of the foregoing, including, but not limited to, contract

claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the “**Assigned Interest**”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by the Assignor.

This Assignment and Acceptance shall be effective as of the Effective Date upon the written consent of the Administrative Agent and, unless an Event of Default shall have occurred and be continuing, the Borrower being subscribed in the space indicated below.

Assignor: _____

Assignee: _____
[and is an Affiliate/Approved Fund of [*identify Lender*]¹]

Borrower: THE NATIONAL UNDERWRITER COMPANY

Administrative Agent: BANK OF MONTREAL, CHICAGO BRANCH, as the administrative agent under the Credit Agreement (the “**Administrative Agent**”)

Credit Agreement: The Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of [●], 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrower, the Guarantors, the Lenders and the Administrative Agent.

Assigned Interest:

	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Loans Assigned (drawn amounts)	Amount of Commitment Assigned (undrawn amounts)	Percentage Assigned of Commitment/Loans
DIP Facility Loan	\$	\$	\$	%

Effective Date: [MONTH] __, 20__

¹ Select as applicable.

The terms set forth in this Assignment and Acceptance are hereby agreed to as of the Effective Date:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Name:
Title:

Consented to and Accepted:
BANK OF MONTREAL, CHICAGO BRANCH,
as the Administrative Agent

By: _____
Name:
Title:

[Consented to and Accepted:

THE NATIONAL UNDERWRITER COMPANY,
as Borrower

By: _____
Name:
Title:]

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ACCEPTANCE

1. Representations and Warranties.

Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) except as provided in clause (a) above, assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any of the Debtors or their Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Debtors or their Affiliates or any other Person of any of their respective obligations under any Loan Document.

Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6.6 or 7.1.1 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Non-U.S. Lender, attached to this Assignment and Acceptance is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the

Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be deemed to be a contract made under, governed by, and construed in accordance with, the laws of the State of New York (including for such purposes Sections 5-1401 and 5-1402 of the General Obligations Law of the State of New York) without regard to conflicts of laws principles.

FORM OF BORROWING REQUEST

Bank of Montreal, Chicago Branch,
as Administrative Agent
115 South LaSalle Street, 12 West
Chicago, IL 60603
Attention: James A. Jerz

THE NATIONAL UNDERWRITER COMPANY

Ladies and Gentlemen:

This Borrowing Request is delivered to you pursuant to Section 2.3 of the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of [●], 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, the “**Credit Agreement**”), among The National Underwriter Company, an Ohio corporation and a debtor and debtor-in-possession (the “**Borrower**”), the Guarantors, the Lenders and Bank of Montreal, Chicago Branch, as Administrative Agent. Terms used herein, unless otherwise defined herein, have the meanings provided in the Credit Agreement.

The Borrower hereby requests that a Loan be made in the aggregate principal amount of \$ _____ on _____, _____ as a [Base Rate Loan] [LIBO Rate Loan having an Interest Period of one month].

The Borrower hereby acknowledges that, pursuant to Section 5.2.2 of the Credit Agreement, each of the delivery of this Borrowing Request and the acceptance by the Borrower of the proceeds of the Loans requested hereby constitutes a representation and warranty by the Borrower that, on the date of the making of such Loans, and both immediately before and after giving effect thereto and to the application of the proceeds therefrom, all statements set forth in Section 5.2.1 of the Credit Agreement are true and correct.

The Borrower agrees that if prior to the time of the Borrowing requested hereby any matter certified to herein by it will not be true and correct in the manner set forth above at such time as if then made, it will immediately so notify the Administrative Agent. Except to the extent, if any, that prior to the time of the Borrowing requested hereby the Administrative Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified as true and correct in all material respects at the date of such Borrowing as if then made.

Please wire transfer the proceeds of the Borrowing to the accounts of the following persons at the financial institutions indicated respectively:

<u>Amount to be Transferred</u>	<u>Person to be Paid</u>	<u>Name, Address, etc. Of Transferee Lender</u>
	<u>Name</u>	<u>Account No.</u>
\$ _____	_____	_____

		Attention: _____
\$ _____	_____	_____

		Attention: _____
\$ _____	_____	_____

		Attention: _____
Balance of such proceeds	Borrower	_____

		Attention: _____

IN WITNESS WHEREOF, the Borrower has caused this Borrowing Request to be executed and delivered, and the certifications and warranties contained herein to be made, by its duly Authorized Representative this _____ day of _____, _____.

THE NATIONAL UNDERWRITER COMPANY

By _____

Name:

Title:

FORM OF CONTINUATION/CONVERSION NOTICE

Bank of Montreal, Chicago Branch,
as Administrative Agent
115 South LaSalle Street, 12 West
Chicago, IL 60603
Attention: James A. Jerz

THE NATIONAL UNDERWRITER COMPANY

Ladies and Gentlemen:

This Continuation/Conversion Notice is delivered to you pursuant to Section 2.4 of the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of [●], 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, the “**Credit Agreement**”), among The National Underwriter Company, an Ohio corporation and a debtor and debtor-in-possession (the “**Borrower**”), the Guarantors, the Lenders and Bank of Montreal, Chicago Branch, as Administrative Agent. Terms used herein, unless otherwise defined herein, have the meanings provided in the Credit Agreement.

The Borrower hereby requests that on _____, _____,

\$_____ of the presently outstanding principal amount of the Loans originally made on _____, _____, presently being maintained as [Base Rate Loans] [LIBO Rate Loans],

be [converted into] [continued as],

*[LIBO Rate Loans having an Interest Period of one month] [Base Rate Loans].

The Borrower hereby:

certifies and warrants that no Default has occurred and is continuing; and

agrees that if prior to the time of the [continuation] [conversion] requested hereby any matter certified to herein by it will not be true and correct in all material respects at such time as if then made, it will immediately so notify the Administrative Agent.

Except to the extent, if any, that prior to the time of the [continuation] [conversion] requested hereby the Administrative Agent shall receive written notice to the contrary from the Borrower, each matter certified to herein shall be deemed once again to be certified as true and correct at the date of such [continuation] [conversion] as if then made.

* Insert appropriate interest rate option.

IN WITNESS WHEREOF, the Borrower has caused this Continuation/Conversion Notice to be executed and delivered, and the certifications and warranties contained herein to be made, by its duly Authorized Representative this _____ day of _____, _____.

THE NATIONAL UNDERWRITER COMPANY

By _____
Name:
Title:

FORM OF WEEKLY CASH FLOW VARIANCE REPORT

**Summit Business Media
13 Week Cash Flow Certificate**

Summit Weekly Cash Forecast - Current Week

	Actual	1	2	3	4	5	6	7	8	9	10	11	12	13
			December				January 2011				February 2011			March 2011
Week beginning (Saturday)	27-Nov	4-Dec	11-Dec	18-Dec	25-Dec	1-Jan	8-Jan	15-Jan	22-Jan	29-Jan	5-Feb	12-Feb	19-Feb	26-Feb
Week ending (Friday)	3-Dec	10-Dec	17-Dec	24-Dec	31-Dec	7-Jan	14-Jan	21-Jan	28-Jan	4-Feb	11-Feb	18-Feb	25-Feb	4-Mar

WEEKLY RECEIPTS & DISBURSEMENT FORECAST

RECEIPTS

All Divisions	1,958,371	1,630,078	1,591,805	1,493,969	1,433,162	1,627,303	1,627,000	1,627,000	1,727,000	1,467,000	1,467,000	1,467,000	1,467,000	1,174,000
Extraordinary items	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total receipts	1,958,371	1,630,078	1,591,805	1,493,969	1,433,162	1,627,303	1,627,000	1,627,000	1,727,000	1,467,000	1,467,000	1,467,000	1,467,000	1,174,000

DISBURSEMENTS

Operating needs

Salaries, OT, and Payroll taxes	1,962,020	110,500	-	110,500	2,100,000	207,600	-	145,500	2,406,858	97,600	-	130,500	2,300,000	93,300
Recurring Contractual Payments	173,808	9,933	20,000	-	-	204,400	-	19,600	180,000	154,100	413,100	-	-	201,000
Fringe Payments	299,893	4,000	4,000	4,000	4,000	372,000	8,500	13,900	23,300	457,200	6,500	5,800	6,000	422,100
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-	-	-
WPP Management Fee/Board Expenses	-	-	4,167	-	-	4,200	15,000	-	5,000	4,000	4,200	-	-	-
Income Taxes	-	-	-	-	-	-	-	-	-	-	-	-	6,500	60,300
Trade Payables	463,325	420,000	410,000	400,000	390,000	438,700	437,500	488,800	481,900	491,400	523,500	613,300	430,400	762,600
Wire Payments	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Postage	23,408	42,000	45,000	81,000	160,000	30,677	31,882	136,350	83,648	49,990	25,873	56,469	170,000	60,491
Prepaid Show Expenses	363,989	39,916	61,000	27,000	147,533	733,971	40,000	51,850	43,850	361,883	34,850	45,931	37,932	90,714
Taxes - other	-	181,581	-	67,060	-	-	52,528	73,614	-	-	86,846	24,389	23,368	-
Insurance	71,656	-	-	-	-	10,679	-	-	50,000	10,679	-	-	-	10,679
Previous Weeks Checks to Clear	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Check Float	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Investment needs

Capital Spending	-	16,875	-	363,125	-	-	-	-	155,000	-	-	-	40,000	-
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Financing needs

Interest, Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Flow Sweep	-	-	-	-	-	-	-	-	-	-	-	-	-	-

One-time & extraordinary needs

Acquisitions	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Consulting, Legal and Bank Expenses	-	556,000	-	675,000	-	2,200	584,000	-	70,000	20,800	-	490,000	171,000	-
Severance Expense	22,715	-	-	-	18,759	-	-	-	18,758	-	-	-	20,000	-
Former Employee Stock Buybacks	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Earnout Payments/ Hotel Cancellation Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Total disbursements	3,380,814	1,380,805	544,167	1,727,685	2,820,292	2,004,427	1,169,410	929,614	3,518,314	1,647,652	1,094,869	1,366,389	3,205,200	1,701,184
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Cash flow before revolver activity	(1,422,443)	249,273	1,047,638	(233,716)	(1,387,130)	(377,124)	457,590	697,386	(1,791,314)	(180,652)	372,131	100,611	(1,738,200)	(527,184)
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DEBT SCHEDULE

Cash balance calculation:

Beginning cash balance	12,072,144	10,649,700	10,898,973	11,946,611	11,712,895	10,325,764	9,948,640	10,406,230	11,103,616	9,312,302	9,131,650	9,503,781	9,604,392	7,866,192
Cash flow before revolver activity	(1,422,443)	249,273	1,047,638	(233,716)	(1,387,130)	(377,124)	457,590	697,386	(1,791,314)	(180,652)	372,131	100,611	(1,738,200)	(527,184)
Cash position, ex-revolver	10,649,700	10,898,973	11,946,611	11,712,895	10,325,764	9,948,640	10,406,230	11,103,616	9,312,302	9,131,650	9,503,781	9,604,392	7,866,192	7,339,008
Draw / (payment) on revolver	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Summit Business Media														
13 Week Cash Flow Certificate														
Summit Weekly Cash Forecast - Current Week														
	Actual	1	2	3	4	5	6	7	8	9	10	11	12	13
		December				January 2011				February 2011				March 2011
Week beginning (Saturday)	27-Nov	4-Dec	11-Dec	18-Dec	25-Dec	1-Jan	8-Jan	15-Jan	22-Jan	29-Jan	5-Feb	12-Feb	19-Feb	26-Feb
Week ending (Friday)	3-Dec	10-Dec	17-Dec	24-Dec	31-Dec	7-Jan	14-Jan	21-Jan	28-Jan	4-Feb	11-Feb	18-Feb	25-Feb	4-Mar
Ending cash balance	10,649,700	10,898,973	11,946,611	11,712,895	10,325,764	9,948,640	10,406,230	11,103,616	9,312,302	9,131,650	9,503,781	9,604,392	7,866,192	7,339,008

**Summit Business Media
13 Week Cash Flow Certificate**

Summit Weekly Cash Forecast - Difference

	Actual	1	2	3	4	5	6	7	8	9	10	11	12
		December					January 2011				February 2011		
Week beginning (Saturday)	27-Nov	4-Dec	11-Dec	18-Dec	25-Dec	1-Jan	8-Jan	15-Jan	22-Jan	29-Jan	5-Feb	12-Feb	19-Feb
Week ending (Friday)	3-Dec	10-Dec	17-Dec	24-Dec	31-Dec	7-Jan	14-Jan	21-Jan	28-Jan	4-Feb	11-Feb	18-Feb	25-Feb

WEEKLY RECEIPTS & DISBURSEMENT FORECAST

RECEIPTS

All Divisions (1) (1-a)	587,025	-	-	(80,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	-	-	-	-
Extraordinary Items	-	-	-	-	-	-	-	-	-	-	-	-	-
Total receipts	587,025	-	-	(80,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	-	-	-	-

DISBURSEMENTS

Operating needs

Salaries, OT, and Payroll taxes	(137,311)	-	-	-	-	-	-	-	-	-	-	-	-
Recurring Contractual Payments	(30,592)	9,933	20,000	(20,000)	-	-	-	-	-	-	-	-	-
Fringe Payments	(72,107)	-	-	-	-	-	-	-	-	-	-	-	-

WPP Management Fee/Board Expenses (2)	(4,167)	-	4,167	-	-	-	-	-	-	-	-	-	-
Income Taxes	-	-	-	-	-	-	-	-	-	-	-	-	-
Trade Payables	23,325	-	-	-	-	-	-	-	-	-	-	-	-
Postage	(36,592)	-	-	-	-	-	-	-	-	-	-	-	-
Prepaid Show Expenses (3)	(80,027)	(5,084)	(25,000)	18,000	30,000	5,000	-	-	-	-	-	-	-
Taxes - other (4)	(141,581)	141,581	-	-	-	-	-	-	-	-	-	-	-
Insurance	(9,023)	-	-	-	-	-	-	-	-	-	-	-	-
Previous Weeks Checks to Clear	-	-	-	-	-	-	-	-	-	-	-	-	-
Check Float	-	-	-	-	-	-	-	-	-	-	-	-	-
Investment needs	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital Spending	-	16,875	-	(16,875)	-	-	-	-	-	-	-	-	-
Financing needs	-	-	-	-	-	-	-	-	-	-	-	-	-
Interest, Principal	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash Flow Sweep	-	-	-	-	-	-	-	-	-	-	-	-	-
One-time & extraordinary needs	-	-	-	-	-	-	-	-	-	-	-	-	-
Acquisitions	-	-	-	-	-	-	-	-	-	-	-	-	-
Consulting, Legal and Bank Expenses	-	-	-	-	-	-	-	-	-	-	-	-	-
Severance Expense	3,287	-	-	-	-	-	-	-	-	-	-	-	-
Former Employee Stock Buybacks	-	-	-	-	-	-	-	-	-	-	-	-	-
Earnout Payments/ Hotel Cancellation Fees	-	-	-	-	-	-	-	-	-	-	-	-	-

Total disbursements	(484,788)	163,305	(833)	(18,875)	30,000	5,000	-	-	-	-	-	-	-
Cash flow before revolver activity	1,071,813	(163,305)	833	(61,125)	(130,000)	(105,000)	(100,000)	(100,000)	(100,000)	-	-	-	-

DEBT SCHEDULE

Cash balance calculation:

Beginning cash balance	-	1,071,813	908,508	909,341	848,216	718,216	613,216	513,216	413,216	313,216	313,216	313,216	313,216
Cash flow before revolver activity	1,071,813	(163,305)	833	(61,125)	(130,000)	(105,000)	(100,000)	(100,000)	(100,000)	-	-	-	-
Cash position, ex-revolver	1,071,813	908,508	909,341	848,216	718,216	613,216	513,216	413,216	313,216	313,216	313,216	313,216	313,216
Draw / (payment) on revolver	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending cash balance - difference	1,071,813	908,508	909,341	848,216	718,216	613,216	513,216	413,216	313,216	313,216	313,216	313,216	313,216

(1) Credit card 'reserve' funds held by First Data* total \$56,217 through 12/3/10. This number is NOT included in receipts or the cash balance above.

- \$600,000 reserve deposit with Elavon (SBM's credit card processing vendor) also outstanding in addition to the FirstData reserve above.

- \$200,000 reserve deposit with BMO/Harris also outstanding in addition to the FirstData reserve above.

(1-a) Early customer payments reduce future weeks' receipts.

(2) Invoice not yet received.

(3) Revised prepaid show expense schedule.

(4) Bank delay in processing of VAT payment.

EXHIBIT B

Week ending (Saturday) Week ending (Friday)	January 2011				February 2011				March 2011				April 2011			
	15-Jan 21-Jan	22-Jan 28-Jan	29-Jan 4-Feb	5-Feb 11-Feb	12-Feb 18-Feb	19-Feb 25-Feb	26-Feb 4-Mar	5-Mar 11-Mar	12-Mar 18-Mar	19-Mar 25-Mar	26-Mar 1-Apr	2-Apr 8-Apr	9-Apr 15-Apr	16-Apr 22-Apr	23-Apr 29-Apr	
WEEKLY RECEIPTS & DISBURSEMENT FORECAST																
RECEIPTS																
All Divisions	1,096,433	1,096,433	1,155,046	1,135,046	1,335,046	1,365,046	1,371,852	1,371,852	1,371,852	1,371,852	1,371,852	1,382,583	1,372,403	1,281,390	1,412,403	
Extraordinary Items	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total receipts	1,096,433	1,096,433	1,155,046	1,135,046	1,335,046	1,365,046	1,371,852	1,371,852	1,371,852	1,371,852	1,371,852	1,382,583	1,372,403	1,281,390	1,412,403	
DISBURSEMENTS																
Operating needs																
Salaries, OT and Payroll Taxes	421,565	2,131,858	97,600	-	131,000	2,300,000	93,000	-	115,000	-	2,317,000	116,000	99,000	1,730,000	2,346,000	
Recurring Contractual Payments	19,600	180,000	129,100	413,100	6,000	-	176,000	-	20,000	-	153,000	10,000	28,000	-	106,000	
Fringe Payments	13,900	23,300	457,200	6,500	-	6,000	372,000	6,000	6,000	6,000	6,000	372,000	6,000	6,000	6,000	
Board Expenses	-	5,000	4,000	4,200	-	-	-	4,200	-	1,195	4,000	-	11,250	-	1,266	
Income Taxes	-	-	-	-	-	-	60,300	-	81,400	-	-	-	-	-	-	
Trade Payables	573,000	-	1,094,000	535,000	846,950	772,700	736,000	682,000	306,050	318,300	536,000	536,000	538,000	466,000	516,000	
Critical Vendors	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Non Critical Vendors	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Contract Vendors	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Wire Payments, Utility Security Deposits	75,000	50,000	25,000	25,000	56,500	170,900	60,500	44,500	29,500	113,600	84,700	63,400	27,300	77,700	155,100	
Postage	136,400	107,000	50,000	25,900	45,931	37,932	90,714	30,000	97,450	36,450	50,950	10,000	10,000	54,000	55,600	
Prepaid Show Expenses	255,781	-	125,233	34,850	45,931	37,932	90,714	30,000	97,450	36,450	50,950	10,000	10,000	54,000	55,600	
Taxes - other	130,000	-	-	86,800	24,400	168,000	-	40,600	-	-	76,948	25,200	67,700	-	67,877	
Insurance	-	-	10,679	-	-	-	10,679	-	-	-	-	10,679	-	-	-	
Previous Weeks Checks to Clear	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Check Float	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Investment needs																
Capital Spending	-	97,400	-	-	40,000	-	-	-	-	265,000	-	-	-	192,000	-	
Financing needs																
Interest, First Lien	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Interest, Hedge	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
DIP Interest	-	3,888	-	-	-	7,776	-	-	-	-	9,720	-	-	-	7,776	
Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Cash Flow Sweep	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
One-time & extraordinary needs																
Consulting, Legal and Bank Expenses	1,400,000	145,000	-	-	550,000	-	-	-	-	550,000	-	-	-	1,270,000	-	
Severance Expense	-	18,758	-	-	-	20,000	-	-	-	-	20,000	-	-	-	20,000	
Total disbursements	3,025,246	2,762,204	1,992,812	1,131,350	1,700,781	3,489,808	1,599,193	807,300	655,400	1,280,545	3,258,318	1,443,279	787,250	3,795,700	3,281,639	
Cash flow before revolver activity	(1,928,814)	(1,665,772)	(837,766)	3,696	(365,735)	(2,124,762)	(227,341)	564,532	716,452	81,307	(1,886,466)	239,304	585,153	(2,514,310)	(1,869,236)	
DIPBT SCHEDULE																
Cash balance calculation:																
Beginning cash balance	14,103,733	12,264,919	10,599,148	9,761,381	9,765,077	9,399,342	7,274,579	7,047,239	7,611,791	8,328,243	8,409,551	6,523,085	6,762,389	7,347,541	4,833,231	
Cash flow before revolver activity	(1,928,814)	(1,665,772)	(837,766)	3,696	(365,735)	(2,124,762)	(227,341)	564,532	716,452	81,307	(1,886,466)	239,304	585,153	(2,514,310)	(1,869,236)	
Cash position, ex-revolver	12,264,919	10,599,148	9,761,381	9,765,077	9,399,342	7,274,579	7,047,239	7,611,791	8,328,243	8,409,551	6,523,085	6,762,389	7,347,541	4,833,231	2,963,995	
Draw / (payment) on revolver	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
DIP Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Ending cash balance	12,264,919	10,599,148	9,761,381	9,765,077	9,399,342	7,274,579	7,047,239	7,611,791	8,328,243	8,409,551	6,523,085	6,762,389	7,347,541	4,833,231	2,963,995	
DIP Facility Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Summit Business Media Holding Company,
et al.,¹

Debtors.

Chapter 11

Case No. 11-10231 (____)

Joint Administration Requested

**INTERIM ORDER (I) AUTHORIZING POST-PETITION SECURED FINANCING
PURSUANT TO SECTIONS 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e)
AND 503(B) OF THE BANKRUPTCY CODE; (II) AUTHORIZING THE DEBTORS TO
USE CASH COLLATERAL; (III) PROVIDING ADEQUATE PROTECTION TO THE
EXISTING FIRST LIEN SECURED PARTIES PURSUANT TO SECTIONS 361, 362,
363 AND 364 OF THE BANKRUPTCY CODE; (IV) PROVIDING POST-PETITION
LIENS TO THE EXISTING SECOND LIEN LENDERS; (V) MODIFYING THE
AUTOMATIC STAY PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY
CODE; AND (VI) SCHEDULING A FINAL HEARING**

Upon the motion (the “**Motion**”), dated January 25, 2011, of Summit Business Media Holding Company and its affiliates, debtors and debtors-in-possession, (collectively, the “**Debtors**”) seeking entry of an Interim Order and the Final Order (as defined below):

- a) authorizing the Debtors to obtain post-petition financing pursuant to sections 363 and 364 of title 11 of the United States Code (the “**Bankruptcy Code**”), by entering into a secured, post-petition, debtor-in-possession credit facility on a super-priority and priming basis to be executed after the entry of this Order (as may be amended, supplemented or otherwise modified from time to time, the “**DIP Facility**”) providing for a multiple-draw, term loan facility in an aggregate principal amount not to exceed \$5 million for operating costs in accordance with

¹ The Debtors in these Cases are: (i) Summit Business Media Holding Company (5547); (ii) Summit Business Media Intermediate Holding Company, LLC (5392); (iii) The National Underwriter Company (8770); (iv) Research Holdings, LTD. (5228); (v) Futures Magazine, Inc. (1102); (vi) NUCO Business Information, LLC (7364); (vii) Agent Media Corporation (3991); (viii) Judy Diamond Associates, Inc. (0517); and (ix) Mining INDABA, LLC (4592). Individual case numbers are available on reasonable request.

the Budget (as defined below) (the “**DIP Loans**”).

- b) authorizing the Debtors to execute and enter into the DIP Facility, among the Debtors, Bank of Montreal, Chicago Branch, as agent (the “**DIP Agent**”) and post-petition lender, and those certain lender institutions that are signatories to the DIP Facility (collectively with the DIP Agent, the “**DIP Lenders**,” and all documents, agreements or instruments in connection with the DIP Loans or related thereto, including the DIP Facility, this Interim Order, any Final Order (as defined below) and all other agreements, documents, notes or instruments related to the DIP Loans, the “**DIP Loan Documents**”) and to perform such other and further acts as may be required in connection with the DIP Loan Documents;
- c) granting priming liens and super-priority claims to and on behalf of and for the benefit of the DIP Lenders in all DIP Collateral (as defined below) in accordance with the DIP Loan Documents, this Interim Order and the Final Order (as defined below) to secure any and all of the Post-petition Obligations (as defined below);
- d) granting adequate protection to Bank of Montreal, Chicago Branch, as administrative agent (the “**Existing First Lien Agent**”) and as lender, and to those other lenders (with the Existing First Lien Agent, the “**Existing First Lien Lenders**”) that are parties to:
 - i. that certain Amended and Restated First Lien Credit Agreement dated as of July 6, 2007, as amended from time to time (the “**Existing First Lien Credit Agreement**”), among the Existing First Lien Agent, as administrative agent, the Existing First Lien Lenders, as lenders, Summit Business Media Intermediate Holding Company, LLC, as borrower, and certain affiliates of

- Summit Business Media Intermediate Holding Company, LLC, as guarantors;
- ii. that certain Parent Guaranty, dated as of November 3, 2006, by Summit Business Media Holding Company, as guarantor, in favor of the Existing First Lien Agent for the benefit of each of the Existing First Lien Secured Parties (as defined below) (the “**Parent Guaranty**”);
 - iii. that certain Subsidiary Guaranty, dated as of November 3, 2006, by The National Underwriter Company, as successor-by-merger to Summit Business Media, LLC and Highline Business Media, LLC, as guarantor, in favor of the Existing First Lien Agent for the benefit of each of the Existing First Lien Secured Parties (as defined below), together with certain supplements thereto, pursuant to which the other debtor-affiliates of Summit Business Media Intermediate Holding Company, LLC guaranteed the obligations owed to the Existing First Lien Secured Parties (as defined below) under the Existing First Lien Credit Agreement (collectively, the “**Subsidiary Guaranty**”);
 - iv. that certain Pledge and Security Agreement, dated as of November 3, 2006, by the Debtors and certain of their predecessors, in favor of the Existing First Lien Agent, together with certain supplements thereto, pursuant to which substantially all of the Debtors’ assets were pledged to the Existing First Lien Secured Parties (as defined below) to secure the obligations to the Existing First Lien Lenders under the Existing First Lien Credit Agreement and to secure the obligations owed to the Collar Provider (as defined below);
 - v. those certain Trademark Security Agreements, Copyright Security Agreements and deposit account control agreements among certain of the

- Debtors and the Existing First Lien Agent whereby certain of the Debtors pledged certain intellectual property to secure, and granted control rights with respect to certain cash accounts in connection with, the obligations to the Existing First Lien Lenders under the Existing First Lien Credit Agreement and the obligations owed to the Collar Provider (as defined below); and
- vi. that certain First Lien Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 7, 2006, whereby The National Underwriter Company granted in favor of the Existing First Lien Agent a mortgage to certain real and personal property located in Kenton County, Kentucky.

The security agreements, mortgage, pledge agreements, collateral assignments listed in clauses (iv) through (vi) above are hereinafter referred to as the “**Pre-petition First Lien Security Agreements**”; the Pre-petition First Lien Security Agreements together with the Existing First Lien Credit Agreement, the Parent Guaranty, the Subsidiary Guaranty and the Interest Rate Collar (as defined below) are hereinafter referred to as the “**Pre-petition First Lien Transaction Documents**”; any and all liens and security interests created under any Pre-petition First Lien Security Agreement, are hereinafter referred to collectively as the “**First Lien Lenders’ Pre-petition Liens**”; any and all collateral posted, transferred, perfected, assigned, pledged or attached under any Pre-petition First Lien Security Agreement are hereinafter referred to collectively as the “**Pre-petition Collateral**”; any Pre-petition Collateral also constituting cash collateral under section 363(a) of the Bankruptcy Code is hereinafter referred to as the

“Cash Collateral”; all obligations, loans, financial accommodations and other amounts owing under, or in connection with, the Pre-petition First Lien Transaction Documents are hereinafter referred to as the **“Pre-petition First Lien Obligations.”**

- e) granting adequate protection to Merrill Lynch Capital Services, Inc., the interest rate collar provider (the **“Collar Provider”** and with the Existing First Lien Lenders, the **“Existing First Lien Secured Parties”** pursuant to the ISDA Master Agreement and the Schedule to the Master Agreement, each between the Collar Provider and Summit Business Media Intermediate Holding Company, LLC (the “Counterparty”) and each dated as of August 7, 2007 (collectively, the Master Agreement”) and the Zero-Cost Collar Transaction, ML Reference No. 07DL24330, 3704257 (the “Transaction”) between the Collar Provider and the Counterparty, evidenced by the Confirmation dated as of August 7, 2007, as amended from time to time by the parties, that is subject to and forms part of the Master Agreement (collectively, the **“Interest Rate Collar”**);
- f) granting adequate protection, junior in all respects to, the Post-petition Obligations (as defined below), the Post-petition Liens (as defined below), the Super-priority Claims (as defined below), the First Lien Lenders’ Adequate Protection Obligations (as defined below), the First Lien Lenders’ Adequate Protection Liens (as defined below), the First Lien Lenders’ Adequate Protection Claims (as defined below), the Pre-petition First Lien Obligations and the First Lien Lenders’ Pre-petition Liens, to Ares Capital Corporation, as administrative agent (the **“Existing Second Lien Agent”**) and as lender, and to those other

lenders (with the Existing Second Lien Agent, the “**Existing Second Lien Lenders**”) that are parties to:

- i. that certain the Amended and Restated Second Lien Credit Agreement dated July 6, 2007, as amended (the “**Existing Second Lien Credit Agreement**”), among Summit Business Media Intermediate Holding Company, LLC, the Existing Second Lien Agent and the Existing Second Lien Lenders; and
- ii. that certain Parent Guaranty, dated as of November 3, 2006, by Summit Business Media Holding Company, as guarantor, in favor of the Existing Second Lien Agent for the benefit of each of the Existing Second Lien Lenders (the “**Second Lien Parent Guaranty**”);
- iii. that certain Subsidiary Guaranty, dated as of November 3, 2006, by The National Underwriter Company, as successor-by-merger to Summit Business Media, LLC and Highline Business Media, LLC, as guarantor, in favor of the Existing Second Lien Agent for the benefit of each of the Existing Second Lien Lenders, together with certain supplements thereto, pursuant to which the other debtor-affiliates of Summit Business Media Intermediate Holding Company, LLC guaranteed the obligations owed to the Existing Second Lien Lenders under the Existing Second Lien Credit Agreement (collectively, the “**Second Lien Subsidiary Guaranty**”);
- iv. (1) that certain Pledge and Security Agreement, dated as of November 3, 2006, by the Debtors and certain of their predecessors, in favor of the Existing Second Lien Agent, together with certain supplements thereto,

(2) those certain Trademark Security Agreements, Copyright Security Agreements and deposit account control agreements among certain of the Debtors and the Existing Second Lien Agent whereby certain of the Debtors pledged certain intellectual property to secure, and granted control rights with respect to certain cash accounts in connection with, the obligations to the Existing Second Lien Lenders under the Existing Second Lien Credit Agreement and (3) that certain Second Lien Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of November 7, 2006, whereby The National Underwriter Company granted in favor of the Existing Second Lien Agent a mortgage to certain real and personal property located in Kenton County, Kentucky, pursuant to which the Pre-petition Collateral was pledged to secure the obligations to the Existing Second Lien Lenders under the Existing Second Lien Credit Agreement on a subordinated basis to the First Lien Lenders' Pre-petition Liens;

The security agreements, mortgage, pledge agreements, collateral assignments listed in clause (iv) above are hereinafter referred to as the “**Pre-petition Second Lien Security Agreements**”; the Pre-petition Second Lien Security Agreement together with the Existing Second Lien Credit Agreement, the Second Lien Parent Guaranty and the Second Lien Subsidiary Guaranty are hereinafter referred to as the “**Pre-petition Second Lien Transaction Documents**” and with the Pre-petition First Lien Transaction Documents, the “**Pre-petition Transaction Documents**”; any and all liens and security interests created under any Pre-

petition Second Lien Security Agreements, are hereinafter referred to collectively as the “**Second Lien Lenders’ Pre-petition Liens**” and with the First Lien Lenders’ Pre-Petition Liens, the “**Pre-petition Liens**”; all obligations, loans, financial accommodations and other amounts owing under, or in connection with, the Pre-petition Second Lien Transaction Documents are hereinafter referred to as the “**Pre-petition Second Lien Obligations**” and with the Pre-petition First Lien Obligations, the “**Pre-petition Obligations.**”

- g) authorizing the Debtors to use cash collateral (as such term is defined in the Bankruptcy Code) in which the Existing First Lien Secured Parties and the Existing Second Lien Lenders have an interest;
- h) approving certain stipulations by the Debtors with respect to the Pre-petition Transaction Documents and the Pre-petition Liens;
- i) pending a final hearing on the Motion (the “**Final Hearing**”), approving the DIP Loans under the DIP Facility in the principal amount not to exceed \$2.5 million to and including the date on which the Final Order (as defined below) is entered;
- j) modifying the automatic stay, under section 362 of the Bankruptcy Code, to permit the DIP Lenders to accelerate the repayment of amounts due and to terminate all commitments under the DIP Facility upon a Cash Collateral Termination Event (as defined below);
- k) subject, and only effective upon the entry of a final order granting such relief, limiting the Debtors’ right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and
- l) scheduling the Final Hearing within 45 days of the entry of the Interim Order and

approve notice with respect thereto in accordance with Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

The Court having considered the Motion, the exhibits attached thereto, including the DIP Loan Documents, and a hearing to consider approval of the Commitments (as defined in the DIP Facility) in an interim aggregate amount equal to \$2.5 million having been held and concluded on _____, 2011 (the “**Interim Hearing**”); and based upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor;

THE COURT HEREBY FINDS, DETERMINES, ORDERS AND ADJUDGES:

1. ***Bankruptcy Petition.*** On January 25, 2011 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing in the management and possession of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no statutory committee (a “**Committee**”) has yet been appointed in the Debtors’ chapter 11 cases (the “**Cases**”).

2. ***Jurisdiction.*** Consideration of this Motion constitutes a “core proceeding” as defined in 28 U.S.C. §§ 157(b)(2). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. ***Need for Financing.***

a. An immediate and critical need exists for the Debtors to obtain funds and use Pre-petition Collateral and Cash Collateral in order, among other thing, to: (a) continue the orderly operation of their business; (b) maintain their business relationships with vendors,

suppliers and customers; and (c) make payroll, capital expenditures and satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral is vital to the preservation and maintenance of the going concern value of the Debtors and to a successful reorganization of the Debtors.

b. The Debtors are unable to obtain unsecured credit allowable only as an unsecured, administrative expense claim under section 503(b)(1) of the Bankruptcy Code. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) or 364(c)(3) without the Debtors' granting to the DIP Lenders liens on the assets of the Debtors pursuant to sections 364(c)(2) and 364(c)(3) and 364(d) of the Bankruptcy Code and super-priority administrative expense claim status pursuant to section 364(c)(1) of the Bankruptcy Code, in each case as provided by this Interim Order and the DIP Loan Documents.

c. The terms of the DIP Facility 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.

d. The ability of the Debtors to continue their business and reorganize or sell their assets under chapter 11 of the Bankruptcy Code depends upon the Debtors obtaining such financing and using such Cash Collateral.

e. The Debtors will suffer immediate and irreparable harm if the requested post-petition financing is not available on an interim and then final basis.

f. It is in the best interests of the Debtors' estates that they be allowed to finance their operations and use Cash Collateral under the terms and conditions set forth herein and in the DIP Loan Documents. The relief requested by the Motion is necessary to avoid immediate and irreparable harm to the Debtors' estate, and good, adequate and sufficient cause

has been shown to justify the granting of the relief requested herein, and the immediate entry of this Interim Order.

g. Based upon the record before the Court, the use of Cash Collateral and the terms of the DIP Loan Documents have been negotiated at arm's length and in "good faith," as that term is used in section 364(e) of the Bankruptcy Code, and are in the best interests of the Debtors, their estates and creditors. The DIP Lenders are extending financing to the Debtors in good faith and are entitled to the benefits of the provisions of section 364(e) of the Bankruptcy Code. The Existing First Lien Secured Parties and the Existing Second Lien Lenders are permitting the use of their Cash Collateral in good faith.

4. ***Debtors' Stipulations.*** The Debtors have stipulated, acknowledged, admitted, represented, and confirmed the following as of the Petition Date (the "**Debtors' Stipulations**"):

a. ***Pre-petition Transaction Documents.*** The Existing First Lien Secured Parties and the Existing Second Lien Lenders made loans and other financial accommodations to the Debtors. As of the Petition Date, the Debtors were liable to the Existing First Lien Secured Parties in respect of the Existing First Lien Credit Agreement in the aggregate outstanding amount of not less than \$188,618,143, plus expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Pre-petition First Lien Transaction Documents), and other obligations incurred in connection therewith, as provided in the Pre-petition First Lien Transaction Documents. As of the Petition Date, the Debtors were liable to the Existing Second Lien Lenders in respect of the Existing Second Lien Credit Agreement in the aggregate outstanding amount of not less than \$55,224,420, plus expenses (including any attorneys', accountants', appraisers' and financial advisors' fees to the extent that they are chargeable or reimbursable under the Pre-petition Second Lien Transaction

Documents), and other obligations incurred in connection therewith, as provided in the Pre-petition Second Lien Transaction Documents.

b. ***Pre-petition Collateral.*** The Existing First Lien Secured Parties and the Existing Second Lien Lenders each properly perfected their mortgages, security interests and liens in and on the Pre-petition Collateral.

c. ***Pre-petition Transaction Documents.*** Each Pre-petition Transaction Document is a valid and binding agreement and the Debtors are obligated, as provided thereunder.

d. ***Pre-petition Obligations.*** The Pre-petition Obligations constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with their terms; the Debtors have no objection, offset, defense or counterclaim of any kind or nature to the Pre-petition Obligations; and the Pre-petition Obligations, and any amounts previously paid to the Existing First Lien Secured Parties and the Existing Second Lien Lenders on account thereof or with respect thereto, are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law.

e. ***Pre-petition Liens.***

- i. The Pre-petition First Lien Obligations are secured by the First Lien Lenders' Pre-petition Liens and that each and every First Lien Lenders' Pre-petition Lien (x) is a valid, binding, perfected, enforceable, first-priority mortgage, lien and security interest granted to the Existing First Lien Secured Parties, which is not subject to avoidance, reduction, disallowance, impairment or subordination by the Debtors pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (y) is separate

and distinct from, and senior in priority to, the Second Lien Lenders' Pre-petition Liens.

- ii. The Pre-petition Second Lien Obligations are secured by the Second Lien Lenders' Pre-petition Liens and that each and every Second Lien Lenders' Pre-petition Lien (x) is a valid, binding, perfected, enforceable, subordinated mortgage, lien and security interest granted to the Existing Second Lien Lenders, which is not subject to avoidance, reduction, disallowance, impairment or subordination (other than to the First Lien Lenders' Pre-Petition Liens) by the Debtors pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (y) is separate and distinct from, and subordinate in priority to, the First Lien Lenders' Pre-petition Liens.

5. ***Interim Hearing & Interim Order.*** Notwithstanding any other provision of this Order or of the other DIP Loan Documents, the Debtors shall not, prior to entry of a final order approving the DIP Loan Documents (the "**Final Order**") or such other further orders as this Court may enter, borrow or incur under the DIP Facility any Post-petition Obligations (as defined below) in an amount greater than \$2.5 million (the "**Interim Amount**"). If a Final Order is not entered within sixty (60) days of the entry of this Order, all extensions of credit under the DIP Facility together with accrued interest shall be immediately due and payable.

6. ***Consensual Priming.*** The Existing First Lien Secured Parties and the Existing Second Lien Lenders have consented to the priming of the Pre-petition Liens by the Post-petition Liens (as defined below) on the terms and conditions set forth in this Interim Order and to the Debtors' use of Cash Collateral. The adequate protection provided herein and other benefits and

privileges contained herein are consistent with and authorized by the Bankruptcy Code and are necessary in order to obtain such consent or non-objection of such parties.

7. ***Service of Motion.*** Notice of the relief sought by the Motion, and the hearing with respect thereto was delivered on January __, 2011 via facsimile and/or overnight delivery to the following parties in interest: (i) the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (ii) the Debtors’ thirty (30) largest non-insider unsecured creditors on a consolidated basis, as identified in the Debtors’ first day motions; (iii) counsel to the DIP Agent and the Existing First Lien Agent; (iv) the Existing Second Lien Agent and/or counsel thereto; and (v) the Internal Revenue Service, (collectively, the “**Interim Notice Parties**”). Given the nature of the relief sought in the Motion, such notice constitutes sufficient and adequate notice of this Order pursuant to Bankruptcy Rules 2002, 4001(b), (c) and (d) and 9014 and section 102(1) of the Bankruptcy Code, as required by sections 363(b) and 364(d) of the Bankruptcy Code, and no further notice of the Motion or this Interim Order is necessary or required.

8. ***Motion Granted.*** The Motion is granted in its entirety, subject to the provisions hereof. Any objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits. This Interim Order shall become effective immediately upon its entry.

9. ***DIP Facility Authorization.*** The Debtors are hereby authorized to enter into the DIP Facility, substantially in the form filed with the Court, with such modifications as permitted by this Interim Order, and the other DIP Loan Documents; and are authorized to borrow funds incur debt, reimbursement obligations and other obligations, grant liens, make deposits, provide guaranties and indemnities and perform their obligations solely in accordance with the terms and conditions of the DIP Loan Documents up to the Interim Amount of \$2.5 million, following

which the Debtors will seek the entry of the Final Order, authorizing them to borrow up to \$5 million in aggregate, or such lesser amount as determined under the DIP Loan Documents.

a. In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees under the DIP Facility, including, without limitation:

i. the execution, delivery and performance of the DIP Loan Documents and any exhibits attached thereto;

ii. the payment to the DIP Lenders of the fees referred to in the DIP Loan Documents and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained by the DIP Agent as provided for in the DIP Loan Documents; and

iii. the performance of all other acts required under or in connection with the DIP Loan Documents.

b. All obligations owed to the DIP Lenders under or in connection with the DIP Loan Documents, including, without limitation, all post-petition obligations, loans, advances and other indebtedness, obligations and amounts (contingent or otherwise) owing from time to time under or in connection with the DIP Loan Documents, are defined and referred to herein as the “**Post-petition Obligations.**”

10. ***Interim Borrowing.*** The Debtors are authorized to borrow up to the Interim Amount in accordance with the Budget, on an interim basis through and including the date of entry of the Final Order.

11. ***Post-petition Obligations Enforceable and Valid.*** Upon execution and delivery of the DIP Loan Documents, the DIP Loan Documents shall constitute valid and binding obligations of the Debtors, enforceable in accordance with their terms. With respect to the Post-petition Obligations, no obligation, payment, transfer or grant of security under this Interim Order or the other DIP Loan Documents shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

12. ***Cash, Cash Collateral & the Budget.***

a. Subject to the terms and conditions set forth in this Interim Order and the other DIP Loan Documents, the Debtors are authorized to use cash, including Cash Collateral and the DIP Loans, only as authorized in an approved Budget (as defined below), subject to the variance provided by paragraph 12(c) of this Interim Order and the DIP Loan Documents, until the earlier to occur of: (i) the termination, acceleration or maturity of the Post-petition Obligations as set forth in the DIP Loan Documents; and (ii) this Interim Order or the Final Order ceases to be in full force and effect (each a “**Cash Collateral Termination Event**”) or with respect to Carve-Out Expenses (as defined below) to the extent permitted by paragraph 19 of this Interim Order and the DIP Loan Documents. The Debtors’ authority to use cash, including Cash Collateral and the DIP Loans, shall automatically terminate on a Cash Collateral Termination Event without further order or relief from the Court (other than with respect to Carve-Out Expenses (as defined below) to the extent permitted by paragraph 19 of this Interim Order and the DIP Loan Documents).

b. All of the Debtors’ operating and capital expenditures and cash flow shall be set forth in a budget prepared on a rolling 13-week basis (the “**Budget**”), as may be modified from

time to time with the consent of the DIP Agent. The Budget shall set forth expected receipts and all of the operating and capital expenditures to be made during each calendar week and in the aggregate for the period of time covered by the Budget. By no later than 3:00 p.m. prevailing Eastern Time of Wednesday of each calendar week, the Debtors shall submit to the DIP Agent an update and extension to the Budget satisfactory to the DIP Agent. Each week, the Debtor shall provide to the DIP Agent a variance report/reconciliation relating to the Budget and the amount of Available Cash (as defined below) for the preceding week and for the cumulative period commencing upon the closing date of the DIP Loan Documents (such weekly variance report/reconciliation, the “**Weekly Cash Flow Variance Report**”), in each case in the form previously accepted under the Existing First Lien Credit Agreement. Each Weekly Cash Flow Variance Report shall be in form satisfactory to the DIP Agent. Prior to the repayment in full of the DIP Facility, all payments (inclusive of costs, expenses and fees) to be made by the Debtors shall be made pursuant to the Budget, subject to the variance provided by paragraph 12(c) of this Interim Order and the DIP Loan Documents.

c. For each four week period during any cumulative 13-week Budget period, or, if shorter, the preceding week(s) since the Petition Date, the Debtors shall not permit expenditures in the aggregate made during such four-week period for any line item to be greater than 110% of the projected amount for such line item contained in the Budget and shall not permit expenditures in the aggregate to be greater than 105% of total projected expenditures contained in the Budget, absent written consent of the DIP Agent. In addition, absent written consent of the DIP Agent, the Debtors shall maintain actual cash receipts in an aggregate amount for the most recent four-week period that are greater than 90% of the aggregate amount of budgeted cash receipts for same four-week period.

d. The Debtors may only use cash, including Cash Collateral and the DIP Loans, (the “**Available Cash**”) to pay the expenses set forth in an approved Budget, subject to the variance provided by paragraph 12(c) of this Interim Order and the DIP Loan Documents, or with respect to Carve-Out Expenses (as defined below) to the extent permitted by paragraph 19 of this Interim Order and the DIP Loan Documents. The Debtors shall use all Available Cash to fund Budget items before drawing on the DIP Loans unless, after giving effect to such funding with Available Cash, the amount of such Available Cash would be less than \$1 million (the “**Minimum Amount**”). The amount of Available Cash during each calendar week will be measured on a weekly basis as of week-end, and shall be reported to the DIP Agent along with the Weekly Cash Flow Variance Report; provided, however, that the amount of Available Cash set forth in any Weekly Cash Flow Variance Report shall not affect the obligation of the Debtors to use Available Cash to fund Budget items if the amount of such Available Cash at the time of such funding exceeds the Minimum Amount.

13. ***Post-petition Liens.*** As collateral securing the full satisfaction of the Post-petition Obligations by the Debtors, the DIP Lenders are hereby granted, as of the date of this Interim Order, and without the need for the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, the following security interests and liens (collectively the “**Post-petition Liens**”) (all assets and property identified in this paragraph 13 being collectively referred to as the “**DIP Collateral**):

a. ***First Lien on Unencumbered Property.*** Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, first priority senior security interest in and lien upon all pre-petition and post-petition assets and property of the

Debtors, whether existing on the Petition Date or thereafter acquired, to the extent such assets and property are not subject to valid, perfected, non-avoidable and enforceable liens in existence as of the Petition Date or valid liens in existence as of the Petition Date that are perfected subsequent to such date to the extent permitted by section 546(b) of the Bankruptcy Code; including without limitation, all cash of the Debtors and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, proceeds of leases of real property, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing (collectively, “**Unencumbered Property**”); provided that Unencumbered Property shall not include the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550 or 551 of the Bankruptcy Code, including any proceeds of, or property and interests, unencumbered or otherwise, recovered in respect of any of the foregoing claims and causes of action (the “**Avoidance Actions**”).

b. ***Liens Junior to Perfected, Pre-petition Liens.*** Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all pre-petition and post-petition assets and property of the Debtors (not including Avoidance Actions), whether now existing or hereafter acquired, that is subject to valid, perfected non-avoidable and enforceable liens, if any, in existence as of the Petition Date, which security interests and liens in favor of the DIP Lenders are immediately junior to such valid, perfected and unavoidable liens, if any, including, without limitation, in all cash of the Debtors and any investment of such cash, inventory, any accounts receivable, other right to payment whether arising before or after the Petition Date, contracts, properties, plants,

equipment, general intangibles, documents, instruments, proceeds of leases of real property, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing.

c. ***Liens Senior to all Liens.*** Pursuant to section 364(d) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, first priority senior security interest in and lien upon all pre-petition and post-petition assets and property of the Debtors (not including Avoidance Actions), which shall be senior in priority to the Pre-petition Liens, whether such assets and property existed on the Petition Date or are thereafter acquired; including without limitation, all cash of the Debtors and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, proceeds of leases of real property, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, and the proceeds of all the foregoing, subject only to valid, perfected and non-avoidable liens on such assets and property in favor of parties (other than the Existing First Lien Secured Parties and the Existing Second Lien Lenders) that are in existence as of the Petition Date or valid liens in existence as of the Petition Date that are perfected subsequent to such date to the extent permitted by section 546(b) of the Bankruptcy Code.

d. ***Liens Senior to Certain Other Liens.*** The Post-petition Liens, the First Lien Lenders' Adequate Protection Liens (as defined below) and the Second Lien Lenders' Post-petition Liens (as defined below) shall not be subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors and its estate under section 551 of the Bankruptcy Code.

14. ***Super-priority Claims.*** In addition to the Post-petition Liens granted herein, all

Post-petition Obligations shall constitute allowed, super-priority, administrative expense claims under section 503(b) of the Bankruptcy Code and under section 364(c)(1) of the Bankruptcy Code (the “**Super-priority Claims**”) against the Debtors, having priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, including, without limitation, those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503, 506(c), 507, 546(c), 726, 1113 and 1114 of the Bankruptcy Code, or otherwise whether incurred in the Cases or any conversion thereof to a case under chapter 7 of the Bankruptcy Code or any other proceeding related hereto (a “**Successor Case**”). The Super-priority Claims shall be payable from, and have recourse to, all pre-petition and post-petition assets and property of the Debtors and all proceeds thereof, including the Avoidance Actions.

15. ***Indemnification.*** The Debtors are hereby authorized and directed to indemnify the DIP Lenders against any liability arising in connection with the DIP Loan Documents to the extent provided in and subject to the DIP Loan Documents. All such indemnities of the DIP Lenders shall constitute Post-petition Obligations and shall be secured by the Post-petition Liens and afforded all of the priorities and protections afforded to the Post-petition Obligations under this Order and the other DIP Loan Documents.

16. ***Existing First Lien Secured Parties’ Adequate Protection.***

a. The Existing First Lien Secured Parties are entitled, under sections 363(e) and 364(d)(1)(B) of the Bankruptcy Code, to adequate protection of their interest in the Pre-petition Collateral for the aggregate diminution in the value of the Existing First Lien Secured Parties’ interest in the Pre-petition Collateral by reason of: (i) the imposition of the automatic stay under section 362 of the Bankruptcy Code; (ii) the priming of the First Lien Lenders’ Pre-petition Liens; (iii) the use of the Existing First Lien Secured Parties’ Cash Collateral; and (iv) the use,

sale or lease of Pre-petition Collateral pursuant to section 363(a) of the Bankruptcy Code (the “**First Lien Lenders’ Adequate Protection Obligations**”). Subject in all respects to the Post-petition Obligations, Post-petition Liens and the rights of the DIP Lenders under this Order and the DIP Loan Documents (which shall at all times rank senior and prior to the Pre-petition Obligations, Pre-petition Liens, Super-priority Claims, First Lien Lenders’ Adequate Protection Obligations, First Lien Lenders’ Adequate Protection Liens (as defined below) and the First Lien Lenders’ Adequate Protection Claims (as defined below)); the Existing First Lien Secured Parties are hereby provided with the following forms of adequate protection:

i. liens on all DIP Collateral (the “**First Lien Lenders’ Adequate Protection Liens**”). Except as provided in this Order, the First Lien Lenders’ Adequate Protection Liens shall not be made subject to or pari passu with any lien on the DIP Collateral by any order subsequently entered in any of the Cases or any Successor Case;

ii. allowed, super-priority claims under section 507(b) of the Bankruptcy Code against the Debtors’ estate (the “**First Lien Lenders’ Adequate Protection Claims**”). The First Lien Lenders’ Adequate Protection Claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, whether incurred in any of the Cases or any Successor Case;

iii. reimbursement of all reasonable and documented fees and expenses incurred by professionals for the Existing First Lien Agent including, without limitation, the reasonable disbursements of counsel and any financial consultant, advisor or expert advising the Existing First Lien Agent; and

iv. the consent of the Existing First Lien Secured Parties to the use of the Pre-petition Collateral by the Debtors shall terminate upon: (a) the Debtors’ failure to make any

payment specified in this paragraph to or on behalf of the Existing First Lien Secured Parties or to comply with their other obligations specified in this paragraph; (b) the occurrence of an Event of Default (as defined by the DIP Loan Documents); or (c) the occurrence of the DIP Facility Termination Date (as defined by the DIP Loan Documents); other than with respect to Carve-Out Expenses (as defined below) to the extent permitted by paragraph 19 of this Interim Order and the DIP Loan Documents.

v. the Existing First Lien Agent and its experts and advisors shall be given access for purposes of monitoring the business of the Debtors and the value of the Pre-petition Collateral; and the Debtors shall provide the Existing First Lien Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the DIP Agent.

vi. subject to and effective only upon entry of a Final Order, the Debtors shall provide for the inclusion of credit bidding rights in favor of the Existing First Lien Secured Parties in connection with the sale of any of the Debtors' assets, whether conducted pursuant to Section 363 of the Bankruptcy Code, Section 1129(b) of the Bankruptcy Code or otherwise.

vii. notwithstanding anything herein to the contrary, this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Existing First Lien Secured Parties to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection at any time, and nothing herein shall affect the rights of any other party or entity to seek or oppose such modification of the grant of the adequate protection provided hereby. If any additional adequate protection claims, liens or other rights are awarded at any time, such claims, liens and/or other rights shall be at all times junior in all respects to the claims and liens granted to or for the

benefit of the DIP Lenders and shall not affect the priority, validity, binding nature, enforceability or perfection of any of such claims and liens granted to or for the benefit of the DIP Lenders; provided, that the foregoing is without prejudice to the right of the Debtors (consistent with the Debtors' stipulations herein) or any other party in interest, including the DIP Lenders, to challenge any such request.

17. *Second Lien Lenders' Adequate Protection.*

- a. The Existing Second Lien Secured Lenders are entitled, under sections 363(e) and 364(d)(1)(B) of the Bankruptcy Code, to adequate protection of their interest in the Pre-petition Collateral for the aggregate diminution in the value of the Existing Second Lien Secured Lenders' interest in the Pre-petition Collateral by reason of: (i) the imposition of the automatic stay under section 362 of the Bankruptcy Code; (ii) the priming of the Second Lien Lenders' Pre-petition Liens; (iii) the use of the Existing Second Lien Secured Lenders' Cash Collateral; and (iv) the use, sale or lease of Pre-petition Collateral pursuant to section 363(a) of the Bankruptcy Code (the "Second Lien Lender Adequate Protection Obligations"). Subject in all respects to (x) the Post-petition Obligations, the Post-petition Liens, the Super-priority Claims and the rights of the DIP Lenders under this Order and the DIP Loan Documents (which shall at all times rank senior and prior to the Pre-petition Obligations, Pre-petition Liens, the First Lien Lenders' Adequate Protection Obligations, First Lien Lenders' Adequate Protection Liens and the First Lien Lenders' Adequate Protection Claims), (y) the First Lien Lenders' Adequate Protection Obligations, the First Lien Lenders' Adequate Protection Liens and the First Lien Lenders' Adequate Protection

Claims and (z) the Pre-petition First Lien Obligations and First Lien Lenders' Pre-petition Liens, the Existing Second Lien Lenders are hereby provided with the following forms of adequate protection:

- i. liens on all DIP Collateral (the "**Second Lien Lenders' Adequate Protection Liens**") junior in all respects to the Post-petition Liens of the DIP Lenders under this Order, the First Lien Lenders' Adequate Protection Liens and the First Lien Lenders' Pre-petition Liens. Except as provided in this Order, the Second Lien Lenders' Adequate Protection Liens shall not be made subject to or pari passu with any lien on the DIP Collateral by any order subsequently entered in any of the Cases or any Successor Case;
- ii. allowed, super-priority claims under section 507(b) of the Bankruptcy Code against the Debtors' estate (the "**Second Lien Lenders' Adequate Protection Claims**"). The Second Lien Lenders' Adequate Protection Claims shall be junior in all respects to the First Lien Lenders' Adequate Protection Claims but shall otherwise have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, whether incurred in any of the Cases or any Successor Case;
- iii. The Debtors shall provide the Existing Second Lien Agent with any written financial information or periodic reporting that is provided to, or required to be provided to, the Existing First Lien Agent; and
- iv. Subject to and effective only upon entry of a Final Order, the Debtors shall

provide for the inclusion of credit bidding rights in favor of the Existing Second Lien Secured Lenders, junior in all respects to the credit bidding rights provided to the Existing First Lien Secured Parties, in connection with the sale of any of the Debtors' assets, whether conducted pursuant to Section 363 of the Bankruptcy Code, Section 1129(b) of the Bankruptcy Code or otherwise.

- v. Notwithstanding anything herein to the contrary, this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Existing Second Lien Secured Parties, subject to the terms and conditions of that certain Amended and Restated Intercreditor Agreement dated as of December 22, 2006 among the Existing First Lien Secured Parties and the Existing Second Lien Secured Parties, to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection at any time, provided, however, that such request to modify the grant of adequate protection provided hereby may not seek different or additional adequate protection in the form of cash, interest, fees or any other form of payment, and nothing herein shall affect the rights of any other party or entity to seek or oppose such modification of the grant of the adequate protection provided hereby. If any additional adequate protection claims, liens or other rights are awarded at any time, such claims, liens and/or other rights shall be at all times junior in all respects to the claims and liens granted to or for the benefit of the DIP Lenders and the Existing First Lien Lenders

and shall not affect the priority, validity, binding nature, enforceability or perfection of any of such claims and liens granted to or for the benefit of the DIP Lenders and the Existing First Lien Lenders; provided, that the foregoing is without prejudice to the right of the Debtors (consistent with the Debtors' stipulations herein) or any other party in interest, including the DIP Lenders, to challenge any such request.

18. ***Perfection of Post-petition Liens & Adequate Protection Liens.***

a. All liens granted or authorized pursuant to this Interim Order, including the Post-petition Liens, the First Lien Lenders' Adequate Protection Liens and the Second Lien Lenders' Post-petition Liens, to or for the benefit of the DIP Lenders, the Existing First Lien Secured Parties or the Existing Second Lien Lenders shall, pursuant to this Interim Order be, and hereby are, valid, enforceable and perfected, effective as of the date of this Order, and (notwithstanding any provisions of any agreement, instrument, document, the Uniform Commercial Code or any other relevant law or regulation of any jurisdiction) no further notice, filing or other act shall be required to effect such perfection, and all liens that may be created upon any deposit accounts or securities accounts shall, pursuant to this Order be, and they hereby are, deemed to confer "control" for purposes of sections 8-106, 9-104 and 9-106 of the Uniform Commercial Code as in effect as of the date hereof in favor of the DIP Lenders; provided, that if the DIP Lenders, the Existing First Lien Secured Parties or the Existing Second Lien Lenders shall, in their sole discretion, choose to require the execution of and/or file (as applicable) such mortgages, financing statements, notices of liens and other similar instruments and documents, all such mortgages, financing statements, notices of liens or other similar instruments and documents shall be deemed to have been executed, filed and/or recorded nunc pro tunc at the time and on

the date of this Order. Each and every federal, state and local government agency or department is hereby directed to accept the entry by this Court of this Order as evidence of the validity, enforceability and perfection as of the date of this Order of the liens granted or authorized pursuant to this Order to or for the benefit of the DIP Lenders, the Existing First Lien Secured Parties or the Existing Second Lien Lenders.

b. The Pre-petition Liens, the Post-petition Liens, the First Lien Lenders' Adequate Protection Liens and the Second Lien Lenders' Post-petition Liens shall not be: (a) subject to any lien that is avoided and preserved for the benefit of the Debtors' estate under section 551 of the Bankruptcy Code; or (b) subordinated to or made pari passu with any other lien under section 364(d) of the Bankruptcy Code or otherwise. No claim or lien having a priority superior to or pari passu with those granted by this Order with respect to the Post-petition Obligations shall be granted or allowed until the indefeasible payment in full in cash and satisfaction of the Post-petition Obligations in the manner provided in the DIP Loan Documents.

c. Subject to and effective only upon entry of a Final Order, neither the DIP Collateral, the DIP Lenders, the Existing First Lien Secured Parties nor the Existing Second Lien Lenders shall be subject to surcharge, pursuant to sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, by the Debtors or any other party in interest without the prior written consent of the DIP Lenders, and no such consent shall be implied from any other action, inaction, or acquiescence by such parties in this proceeding, including but not limited to, the funding of the Debtors' ongoing operations by the DIP Lenders. Subject to entry of the Final Order, the "equities of the case" exception contained in section 552(b) of the Bankruptcy Code shall be deemed waived.

19. ***Carve-out Expenses.***

a. The Carve-Out Expenses shall be paid pursuant to the DIP Facility and shall be defined to mean: (a) the (i) unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); and (ii) budgeted and unpaid professional fees and expenses of the Debtors and any official committee appointed in the Debtors' Cases both to the extent incurred prior to the date of the delivery of a written notice delivered by the DIP Agent following the occurrence of an Event of Default expressly stating that the Carve-Out Expenses have been triggered, plus (b) after the date of the delivery of such notice, (i) the unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); and (ii) the professional fees and expenses incurred by the Debtors and any official committee appointed in the Debtors' Cases that are approved by the Court, in an aggregate amount of (b)(i) and (b)(ii) not to exceed \$425,000. Notice that the Carve-Out Expenses have been triggered shall be provided by the DIP Agent to counsel for the Debtors and lead counsel for any official committee appointed in the Debtors' Cases.

b. No Budget shall include, and no Carve-Out Expenses may be incurred or be available for any fees or expenses incurred by any party, including the Debtors, any official committee appointed in any of the Cases, or any of their professionals, in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings, contested matter, objection, other litigation, or discovery against the Existing First Lien Secured Parties, the Existing Second Lien Lenders, the DIP Lenders or their advisors, agents or subagents, including, without limitation, challenging the amount, validity, perfection, priority or enforceability of, or asserting any defense, counterclaim or offset to, the obligations arising under the DIP Facility and the Pre-petition Transaction Documents and the liens and claims

thereunder in favor of the Existing First Lien Agent for the benefit of the Existing First Lien Secured Parties, the Existing Second Lien Agent for the benefit of the Existing Second Lien Lenders, and the DIP Lenders provided, however, that an aggregate amount not to exceed \$15,000 may be used by any official committee of creditors appointed in the Cases to investigate the foregoing.

c. Nothing herein shall constitute a waiver by the Existing First Lien Secured Parties, by the Existing Second Lien Lenders or by the DIP Lenders of their rights to object to the fees and expenses of any professional retained by the Debtors or an official committee appointed in any of the Cases, all such rights being fully reserved.

20. ***Limitation on Use of Collateral and DIP Facility Proceeds.*** Notwithstanding anything herein to the contrary, amounts loaned or advanced under, or in connection with, the DIP Facility, any and all proceeds of collateral and all existing and future cash collateral may not be used, directly or indirectly, by the Debtors, any official committee appointed in any of the Cases, or any other person or entity to: (a) object to, contest in any manner, or raise any defenses to, the validity, perfection, priority, extent, amount or enforceability of the DIP Facility, any DIP Loan Document, any Post-petition Obligation, any Post-petition Lien or Super-priority Claim; (b) assert any claims or causes of action against the Existing First Lien Secured Parties, the Existing Second Lien Lenders, the DIP Lenders or their respective advisors, agents and sub-agents, including discovery in anticipation thereof, or in connection with the initiation or prosecution of any claims, causes of action, adversary proceedings, contested matter, objection, other litigation or discovery involving the DIP Lenders, the Existing First Lien Secured Parties or the Existing Second Lien Lenders; (c) prevent, hinder or otherwise delay the Existing First Lien Secured Parties', the Existing Second Lien Lenders' or the DIP Lenders' assertion,

enforcement or realization on Pre-petition Collateral or DIP Collateral, as applicable, in accordance with the DIP Loan Documents, the Pre-petition Transaction Documents or this Order; (d) seek to modify any of the rights granted to the DIP Lenders, the Existing First Lien Secured Parties or the Existing Second Lien Lenders hereunder, under the DIP Loan Documents or the Pre-petition Transaction Documents, in each of the foregoing cases without such parties' prior written consent; (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (1) approved by an Order of this Court and (2) in accordance with the Budget; (f) seek authorization, or support any other person or entity seeking authorization, to use any Cash Collateral without the consent of the DIP Lenders; or (g) obtain a lien senior to, or on a parity with, the liens of the DIP Lenders in any DIP Collateral or any portion thereof.

21. ***Perfection Maintenance.*** To the extent the Existing First Lien Agent, in its role as agent under the Pre-petition First Lien Transaction Documents or the Existing Second Lien Agent, in its role as agent under the Pre-petition Second Lien Transaction Documents is the secured party or is listed as loss payee or additional insured under any Pre-petition Transaction Document, the DIP Lenders, are also deemed to be the secured party or loss payee in that capacity and shall act in that capacity and distribute any proceeds recovered or received first, for its benefit in accordance with the DIP Loan Documents, second, subsequent to indefeasible payment in full of all DIP Obligations in cash, for the benefit of the Existing First Lien Secured Parties under the Pre-petition First Lien Transaction Documents and third, subsequent to indefeasible payment in full of all Pre-Petition First Lien Obligations in cash, for the benefit of the Existing Second Lien Lenders under the Pre-petition Second Lien Transaction Documents.

22. ***Preservation of Rights.***

- a. Notwithstanding anything herein to the contrary, the entry of this Order is without

prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair: (a) any of the rights of any of the DIP Lenders or the Existing First Lien Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, any right of the DIP Lenders or the Existing First Lien Secured Parties to: (1) request modification of the automatic stay of section 362 of the Bankruptcy Code; (2) request dismissal of any of the Cases, conversion of any of the Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee or examiner (including with expanded powers); or (3) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a chapter 11 plan or plans, (b) subject to the terms and conditions of that certain Amended and Restated Intercreditor Agreement dated as of December 22, 2006 among the Existing First Lien Secured Parties and the Existing Second Lien Lenders, any of the rights of the Existing Second Lien Lenders under the Bankruptcy Code or under non-bankruptcy law or (c) subject to the terms and conditions of any applicable agreements, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lenders, the Existing First Lien Secured Parties or the Existing Second Lien Lenders.

b. The Post-petition Obligations, the Pre-petition Obligations and the First Lien Lenders' Adequate Protection Obligations, and the claims and liens granted to or for the benefit of the DIP Lenders, the Existing First Lien Secured Parties and the Existing Second Lien Lenders pursuant to this Interim Order and the other DIP Loan Documents, are not subject to any setoff or reduction of any kind, including, without limitation, under section 502(d) of the Bankruptcy Code, and shall not be discharged by the entry of an order: (a) confirming a chapter 11 plan in any of the Cases (and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors hereby waives such discharge); or (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code. Under no circumstances shall any chapter 11 plan in any of

the Cases be confirmed or become effective unless such plan provides that the Post-petition Obligations shall be paid in full in cash and satisfied in the manner provided in the DIP Loan Documents on or before the effective date of such plan.

c. Based upon the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the commitments to extend DIP Loans contemplated by this Order, in the event that any or all of the provisions of this Interim Order or any other DIP Loan Documents, including the Final Order, are hereafter modified, amended or vacated by a subsequent order of this or any other Court, no such modification, amendment or vacation shall affect the validity, enforceability or priority of any lien or claim authorized or created hereby or thereby or any Post-petition Obligations incurred hereunder or thereunder. Notwithstanding any such modification, amendment or vacation, any Post-petition Obligations incurred and any claim granted to the DIP Lenders hereunder or under the other DIP Loan Documents arising prior to the effective date of such modification, amendment or vacation shall be governed in all respects by the original provisions of this Interim Order and the other DIP Loan Documents and the DIP Lenders shall be entitled to all of the rights, remedies, privileges and benefits, including the liens and priorities granted herein and therein, with respect to any such Post-petition Obligations.

d. The validity, enforceability, priority or amount of any of the claims and liens granted to or for the benefit of the DIP Lenders under this Interim Order or any other DIP Loan Documents with respect to the Post-petition Obligations shall not be affected by any finding or order of this Court or any other court regarding any Existing First Lien Secured Party, any Existing Second Lien Lender or Pre-petition Liens, including, without limitation, any order of this Court or any other Court invalidating any Pre-petition Obligation or Pre-petition Liens.

e. To the extent that any Post-petition Obligations remain unpaid, any amounts disgorged by the Existing First Lien Secured Parties or the Existing Second Lien Lenders in respect of any of the Pre-petition Obligations (whether such amounts were received by the Existing First Lien Secured Parties or the Existing Second Lien Lenders prior or subsequent to the Petition Date) shall upon such disgorgement be immediately delivered by the Debtors to the DIP Lenders to be applied to repay the Post-petition Obligations in accordance with the terms of the DIP Loan Documents.

23. ***Release.***

a. The Debtors hereby forever release, waive and discharge each Existing First Lien Secured Party and Existing Second Lien Lender, together with their respective officers, directors, employees, agents, sub-agents, attorneys, professionals, affiliates, subsidiaries, assigns and/or successors (collectively, the “**Released Parties**”), from any and all claims and causes of action arising out of, based upon or related to, in whole or in part: (a) the Pre-petition Transaction Documents; (b) the Pre-Petition Liens, or (c) Pre-petition Obligations including, without limitation, any claims or defenses as to the extent, validity, priority or perfection of the Pre-petition Liens or Pre-petition Obligations, “lender liability” claims and causes of action, any actions, claims or defenses under chapter 5 of the Bankruptcy Code or any other claims and causes of action and any resulting subordination or recharacterization of any payments made to any Existing First Lien Secured Party pursuant to this Order (all such claims, defenses and other actions described in this paragraph are collectively defined as the “**Claims and Defenses**”). Nothing contained in this subparagraph shall affect the rights of any official committee appointed in any of these Cases or any other party in interest to undertake any action with respect to, including, without limitation, any investigation or prosecution of, Claims and Defenses that is

permitted in the other subparagraphs of this paragraph.

b. The Debtors' Stipulations and the releases set forth in paragraph 23(a) above shall be binding upon the Debtors in all circumstances. The Debtors' Stipulations and the releases set forth in paragraph 23(a) above shall be binding upon all other parties in interest, including, without limitation, any official committee of unsecured creditors appointed in any of the Cases, unless such official committee files a complaint pursuant to Bankruptcy Rule 7001 seeking to invalidate, subordinate or otherwise challenge the Debtors' Stipulations, Pre-petition Liens or the Pre-petition Obligations; provided, that any such complaint must be filed in this Court within seventy-five (75) days from the engagement of counsel for any official committee of unsecured creditors, or, if no counsel or no official committee of unsecured creditors is appointed, within ninety (90) days of the Petition Date (the "**Challenge Deadline**"). If no such complaint is filed before the Challenge Deadline, or if such complaint is timely filed and then subsequently dismissed, then any and all Claims and Defenses against any of the Released Parties shall be, without further notice or order of the Court, forever relinquished, released and waived as to such committee and all other persons and entities. If such a complaint is timely filed before the Challenge Deadline, any and all Claims and Defenses against any of the Released Parties shall be immediately and without further action forever relinquished, released and waived as to such committee and every other person or entity, except with respect to Claims and Defenses that are expressly asserted in such complaint.

c. If no such complaint as to any Pre-petition Lien, the Pre-petition Obligations, the Pre-petition Transaction Documents or the Released Parties is filed before the Challenge Deadline, or if such complaint is timely filed and then subsequently dismissed, then, without the requirement or need to file any proof of claim with respect thereto: (a) the Pre-petition

Obligations shall constitute allowed claims for all purposes in the Cases and any Successor Case; (b) the Pre-petition Liens shall be deemed legal, valid, binding, enforceable, perfected, not subject to subordination (except for the subordination thereof to the Post-petition Liens and as otherwise specified in this Order and the DIP Loan Documents, as applicable) or avoidance for all purposes in the Cases and any Successor Case; (c) the release of the Claims and Defenses shall be binding on all parties in interest in the Cases and any Successor Case, and (d) the Pre-petition Obligations, the Pre-petition Liens, releases of the Claims and Defenses against the Released Parties, and prior payments on account of or with respect to the Pre-petition Obligations, respectively, not subject to any such complaint shall not be subject to any other or further claims, cause of action, objection, contest, setoff, defense or challenge by any party in interest for any reason, including, without limitation, by any successor to or estate representative of any Debtor. Nothing in this Interim Order shall confer or deny standing upon any official committee appointed in any of these Cases or any other person or entity to bring, assert, commence, continue, prosecute or litigate the Claims and Defenses against any Released Party.

24. ***Survival of Certain Rights.*** Notwithstanding anything herein or in any other DIP Loan Documents, upon the occurrence of the DIP Facility Termination Date (as defined in the DIP Loan Documents), all of the rights, remedies, benefits and protections provided: (i) to the DIP Lenders under this Interim Order and the other DIP Loan Documents; and (ii) to the Existing First Lien Secured Parties and the Existing Second Lien Lenders under this Interim Order and the Pre-petition Transaction Documents, shall survive such DIP Facility Termination Date (as defined in the DIP Loan Documents); provided, however, that all of the obligations of the Debtors under the DIP Loan Documents shall terminate on the Discharge Date (as defined in the DIP Loan Documents). Upon such DIP Facility Termination Date (as defined in the DIP

Loan Documents), the principal of and all accrued interest and fees and all other Post-petition Obligations shall be immediately due and payable and the DIP Lenders shall have all other rights and remedies provided in this Order, the other DIP Loan Documents and applicable law.

25. ***Rights Upon Case Dismissal.*** Until all obligations and indebtedness owing to the DIP Lenders shall have been paid in full in cash and satisfied in the manner provided in the DIP Loan Documents and this Interim Order, the Debtors shall not seek an order dismissing any of the Cases. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349(b) of the Bankruptcy Code) that: (i) the claims and liens granted pursuant to this Interim Order to or for the benefit of the DIP Lenders shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all obligations in respect thereof shall have been paid in full in cash and satisfied in the manner provided in the DIP Loan Documents (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) the claims and liens granted pursuant to this Interim Order to or for the benefit of the Existing First Lien Secured Parties and the Existing Second Lien Lenders shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order (and that such claims and liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (iii) that prior to dismissal, the Debtors shall deliver to the DIP Lenders and record, at the Debtors' cost, financing statements, mortgages and other documentation evidencing perfected liens in the DIP Collateral; and (iv) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such claims and liens.

26. ***Events of Default.***

- a. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby

vacated and 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 defined in the DIP Facility), all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions: (a) terminate the Debtors' use of Cash Collateral and cease to make any loans or advances to the Debtors other than with respect to Carve-Out Expenses (as defined below) to the extent permitted by paragraph 19 of this Interim Order and the DIP Loan Documents; (b) declare all Post-petition Obligations to be immediately due and payable; (c) terminate any unfunded commitments under the proposed DIP Facility other than with respect to Carve-Out Expenses (as defined below) to the extent permitted by paragraph 19 of this Interim Order and the DIP Loan Documents; (d) set off and apply immediately any and all amounts in accounts maintained by the Debtors with the DIP Lenders against the Post-petition Obligations, and otherwise enforce rights against the DIP Collateral in the possession of the DIP Lenders for application towards the Post-petition Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Order, the other DIP Loan Documents or applicable law to effect the repayment and satisfaction of the Post-petition Obligations; provided, however, that the DIP Lenders shall provide five (5) business days written notice (by facsimile, telecopy, electronic mail or otherwise) to the U.S. Trustee, counsel to the Debtors and counsel to any official committee appointed in any of the Cases of such Event of Default prior to exercising any enforcement rights or remedies in respect of the DIP Collateral (other than the rights described in clauses (a), (b), and (c) above (to the extent they might be deemed remedies in respect of the DIP Collateral) and other than with respect to freezing any deposit accounts or securities accounts); provided further, that the Debtors shall have the right to seek continuation of the automatic stay during such five (5) business days period.

b. No holder of a lien primed by this Interim Order or granted by the Debtors as adequate protection shall be entitled to object on the basis of the existence of any such lien to the exercise by the DIP Lenders of its rights and remedies under the DIP Loan Documents or under applicable law to effect satisfaction of the Post-petition Obligations or to receive any amounts or remittances due hereunder or under the other DIP Loan Documents. The DIP Lenders shall be entitled to apply the payments or proceeds of the DIP Collateral in accordance with the provisions of this Interim Order and the other DIP Loan Documents and the DIP Lenders shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or otherwise.

c. The rights and remedies of the DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lenders may have under the other DIP Loan Documents or otherwise. The failure or delay by the (a) the DIP Lenders to seek relief or otherwise exercise their rights and remedies under this Interim Order or any other DIP Loan Documents or (b) the Existing First Lien Secured Parties or the Existing Second Lien Lenders to exercise their rights and remedies under this Interim Order shall not constitute a waiver of any of the rights of the DIP Lenders, Existing First Lien Secured Parties or the Existing Second Lien Lenders hereunder, thereunder or otherwise, and any single or partial exercise of such rights and remedies against any party or DIP Collateral shall not be construed to limit any further exercise of such rights and remedies against any or all of the other party and/or DIP Collateral.

27. ***Proofs of Claim.*** The Existing First Lien Lenders and the Existing Second Lien Lenders will not be required to file proofs of claim in any of the Debtors cases. The acknowledgment by the Debtors of the Pre-petition Obligations, Pre-petition Liens, rights, priorities and other protections granted to or in favor of the Existing First Lien Lenders and the

Existing Second Lien Lenders as set forth herein shall be deemed a timely failed proof of claim on behalf of the Existing First Lien Lenders and the Existing Second Lien Lenders in each of the Debtors cases with respect to the Pre-petition Obligations.

28. *Notice.* The Debtors shall, on or before _____, 2011, serve by United States mail, first class postage prepaid, copies of the Motion, this Interim Order and a notice of the Final Hearing (the “Final Hearing Notice”) to be held on _____, 2011, at _____ (the “Final Hearing Date”) to consider entry of the Final Order on the Interim Notice Parties. Copies of the Motion, this Interim Order and the Final Hearing Notice also shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by United States mail, first class postage prepaid, within the later of one business day following the receipt of such request and _____, 2011. The Final Hearing Notice shall state that any party in interest objecting to the entry of the Final Order shall file written objections with the Court no later than _____ on _____, 2011, which objections shall be served so that the same are received on or before such date and time by: (a) Reed Smith LLP, 599 Lexington Avenue, New York, New York 10022; Attn: J. Andrew Rahl, Jr., Esq., counsel to the Debtors; (b) the Office of the United States Trustee, David L. Buchbinder, Esquire, 844 North King Street, Room 2207, Lockbox 35, Wilmington, DE 19801; (c) Mayer Brown LLP, 71 South Wacker Drive, Chicago, IL 60606, Attn: J. Robert Stoll, Esq. and John J. Voorhees, Jr., Esq., counsel to the Existing First Lien Agent and the DIP Agent; (d) Womble Carlyle Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801, Attn: Steven K. Kortanek, Esq., co-counsel to the Existing First Lien agent and DIP Agent; and (e) Bingham McCutchen LLP, 399 Park Avenue, New York, New York 1002-4689, Attn: Katherine G. Weinstein, Counsel to the Existing Second Lien Agent.

29. ***Binding Effect; Successors and Assigns.*** This Interim Order is hereby deemed effective immediately pursuant to Federal Bankruptcy Rule of Procedure 6004(h). The provisions of this Interim Order shall be binding upon and inure to the benefit of each DIP Lenders, each Existing First Lien Secured Party and the Debtors and their successors and assigns, including any chapter 7 trustee or other trustee or fiduciary hereafter appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors in a Successor Case.

30. ***Conflict.*** In the event that any provision of this Interim Order conflicts with any term of the other DIP Loan Documents, this Interim Order shall govern.

U.S. Bankruptcy Judge