

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

In re:

HOBIBICO, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10055 (KG)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING DEBTORS TO: (A) USE CASH COLLATERAL  
ON AN EMERGENCY BASIS PENDING A FINAL HEARING; (B) INCUR  
POSTPETITION DEBT ON AN EMERGENCY BASIS PENDING A FINAL  
HEARING; AND (C) GRANT ADEQUATE PROTECTION AND PROVIDE  
SECURITY AND OTHER RELIEF TO WELLS FARGO BANK, NATIONAL  
ASSOCIATION, AS AGENT, AND THE OTHER SECURED PARTIES**

Hobbico, Inc. ("Hobbico") and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") file this motion (this "Motion") pursuant to sections 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 4001-1, and 9014-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim Order"), and a final order (the "Final Order"),<sup>2</sup> (i) authorizing the Debtors to (a) to obtain postpetition financing (the "DIP Financing") pursuant to the terms and conditions set forth in the loan agreement attached hereto as **Exhibit B** (as amended, supplemented or otherwise modified from time to time in accordance with the terms

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Hobbico, Inc. (9545); Tower Hobbies, Inc. (5185); Great Planes Model Manufacturing, Inc. (5259); United Model, Inc. (5302); Revell Inc. (8545); Estes-Cox Corp. (2196); and Axial R/C Inc. (0233). The Debtors' headquarters are located at 2904 Research Road, Champaign, Illinois 61822.

<sup>2</sup> The Debtors will file the form of Final Order prior to the Final Hearing (as defined herein).

hereof and thereof, the “Postpetition Loan Agreement”<sup>3</sup> and, together with such other documents and agreements entered into in connection therewith, (the “Postpetition Documents”) and (b) use Cash Collateral (as defined below), (ii) authorizing the Debtors to grant adequate protection to the Prepetition Agent and Prepetition Secured Parties (as defined below), (iii) scheduling a hearing (the “Final Hearing”) to consider entry of the Final Order and (iv) granting related relief. The facts and circumstances supporting this Motion are set forth in the concurrently filed *Declaration of Tom S. O’Donoghue, Jr. in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”). In further support of this Motion, the Debtors respectfully represent as follows:

**Preliminary Statement**

1. The Debtors seek postpetition use of Cash Collateral from the Prepetition Secured Parties, and access to postpetition financing on a superpriority basis from the Postpetition Lenders. In the ordinary course of business, the Debtors require cash on hand and cash flow from their operations to fund their liquidity needs and operate their businesses. In addition, the Debtors require access to sufficient liquidity to fund these chapter 11 cases while working towards a successful sale transaction. Postpetition financing is necessary in order for the Debtors to have access to sufficient liquidity to maintain ongoing day-to-day operations, ensure proper servicing of customers post-petition and fund working capital needs.

2. The DIP Financing also serves a larger purpose for the Debtors. The additional standby liquidity made available under the DIP Financing signals to the Debtors’ vendors, suppliers, customers and employees that the Debtors will continue to meet their commitments during these chapter 11 cases. Moreover, the Debtors believe the DIP Financing is in the best

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Postpetition Loan Agreement or the Interim Order, as applicable.

interest of the estates because it is the Debtors' best financing option and will allow the Debtors to maximize value for their estates.

3. If the Debtors are unable to gain access to the DIP Commitment, the proposed path to a successful going concern sale of the Debtors' assets would be blocked and the Debtors' value as a whole could be materially and perhaps irreparably harmed. The Debtors have no significant unencumbered cash or other assets. Absent the liquidity provided by the DIP Financing and use of Cash Collateral, the Debtors would, among other things, be unable to pay vendors and suppliers resulting in a cessation of their business operations. The relief requested by this Motion is a necessary step to both preserving the Debtors' operations as well as a bridge to a sale transaction that maximizes value for the Debtors' estates and all of their stakeholders. On this record, and as the Debtors are prepared to demonstrate at the hearing on this Motion, the relief requested herein represents a sound exercise of business judgment and should be approved.

#### **Relief Requested**

4. For the reasons set forth herein, the Debtors seek the following relief:
  - a. authorization to obtain the DIP Financing pursuant to the Postpetition Loan Agreement, by and among the Debtors, as borrowers (or the "Borrowers"), and Wells Fargo Bank, National Association, as administrative agent (the "Postpetition Agent"), and the lenders named therein (the "Postpetition Lenders");
  - b. authorization to execute and deliver the Postpetition Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;
  - c. authorization to grant the Postpetition Lenders assurances for the full and timely payment of the Debtors' obligations under the Postpetition Documents by granting to the Postpetition Lenders (i) pursuant to section 364(c)(1) of the Bankruptcy Code, a superpriority administrative expense claim having priority over any and all expenses and claims specified in any other section of the Bankruptcy Code, including, without limitation, sections 503(b) and 507(b) of the Bankruptcy Code, subject and subordinate to the Carveout (as defined below), and (ii) pursuant to section 364(c)(2), (3) and (d) of the bankruptcy Code, liens on, and security interest in any and all of the Postpetition Collateral; subject and subordinate only to the Carveout and the Permitted Priority Liens;

- d. authorization to grant allowed superpriority administrative expense claims to the Postpetition Agent and the Postpetition Lenders;
- e. authorization to use Cash Collateral as such term is defined in section 363 of the Bankruptcy Code (the “Cash Collateral”);
- f. authorization to grant adequate protection to the Prepetition Agent and Prepetition Secured Parties;
- g. pursuant to Bankruptcy Rule 4001, to schedule a preliminary hearing on this Motion and obtain authorization, from the entry of the Interim Order until the Final Hearing, to obtain credit under the terms contained in the Postpetition Documents and to utilize Cash Collateral to the extent necessary to avoid immediate and irreparable harm to the Debtors’ estates;
- h. pursuant to Bankruptcy Rule 4001, to schedule a Final Hearing on this Motion to consider entry of the Final Order authorizing the Debtors to borrow the balance of the DIP Commitment on a final basis on the terms and conditions set forth in the Postpetition Documents; and
- i. waiver of any applicable stay and providing for the immediate effectiveness of the Interim Order.

**Jurisdiction**

5. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

6. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory bases for the relief requested herein are sections 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014 and Rules 2002-1, 4001-1, 9013-1(f) and 9014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

## Background

### A. General Background

7. On January 10, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief in this Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner, or creditors’ committee has been appointed in the Debtors’ cases. These chapter 11 cases are consolidated for procedural purposes only and administered jointly.

8. A detailed description of the Debtors’ businesses, capital structure, and the events leading to these chapter 11 cases is fully set forth in the First Day Declaration.

### B. The Prepetition Capital Structure

#### *i. Senior Debt*

11. On July 11, 2014, all of the Debtors (each a “Borrower”) entered into the Third Amended and Restated Credit Agreement (as amended, restated, modified, supplemented, or replaced from time to time, the “Prepetition Credit Agreement”), by and among the Borrowers, the lenders party thereto from time to time (in such capacity, the “Prepetition Lenders”), and Wells Fargo Bank, N.A. as the administrative agent, swingline lender and issuing lender (in such capacities, the “Prepetition Agent”) for its own benefit and the benefit of the other “Secured Parties” as defined therein, providing the Debtors with prepetition credit facilities (the “Prepetition Credit Facilities”), consisting of revolving credit loans not to exceed \$70.0 million (the “Revolving Credit Loans”), a term loan of \$75.0 million (the “Term Loan”), letters of credit not to exceed \$450 thousand (the “Letters of Credit”), and a swing loan facility not to exceed \$5 million (the “Swing Loan Facility”). The Prepetition Credit Agreement also obligated the Borrowers to repay amounts arising from hedge agreements (the “Secured Hedge

Agreements”) and cash management agreements (the “Secured Cash Management Agreements”). The non-Debtor Foreign Subsidiaries (collectively, the “Guarantors” and, together with the Borrowers, the “Prepetition Obligors”) serve as guarantors under the Prepetition Credit Facility. The borrowing availability under the Prepetition Revolving Credit Loans is capped pursuant to a budget and by a borrowing base calculated by taking the sum of certain percentages of value of the Prepetition Obligors’ inventory and accounts receivable, subject to certain reserves and sub-limits. By their terms, the Prepetition Credit Facilities mature on July 11, 2019.

12. The Prepetition Obligors secured their obligations under the Prepetition Credit Facilities by granting the Prepetition Agent, for the benefit of the Secured Parties, first-priority liens on substantially all of their assets (collectively, the “Senior Collateral”).

13. As of the Petition Date, there is approximately \$74.5 million outstanding under the Prepetition Credit Facilities, comprised of \$37.0 million on account of the Revolving Credit Loan, \$37.5 million on account of the Term Loan. The revolver balance is inclusive of \$450,000 in Letters of Credit.

*ii. Subordinated Note*

14. On July 11, 2014, the Borrowers and Cyprium Investors IV AIV I LP (“Cyprium”) entered into a Securities Purchase Agreement (as amended, restated, modified, supplemented, or replaced from time to time, the “Securities Purchase Agreement”) pursuant to which the Borrowers entered into a subordinated promissory note with Cyprium (as amended, restated, modified, supplemented, or replaced from time to time, the “Subordinated Note”). The Guarantors have guaranteed the Borrowers’ obligations under the Subordinated Note. By its terms, the Subordinated Note matures on July 11, 2020.

15. The Prepetition Obligors secured their obligations under the Subordinated Note by granting Cyprum subordinated liens on substantially all of their assets (collectively, the “Subordinated Collateral”). Pursuant to a Subordination and Intercreditor Agreement (as amended, restated, modified, supplemented, or replaced from time to time, the “Subordination Agreement”) between Cyprum and Prepetition Agent, Cyprum agreed, among other things, that the security interests and liens of the Prepetition Agent upon the Senior Collateral would be senior in all respects and prior to the security interests and liens of Cyprum in such property, that Cyprum would not object to postpetition financing from the Administrative Agent or the Prepetition Lenders or demand adequate protection in connection with such financing, or object to the use of cash collateral by the Debtors.

16. As of the Petition Date, there is approximately \$41.2 million outstanding under the Subordinated Note.

*iii. Other Secured Debt*

17. In addition to the Prepetition Credit Facility and the Subordinated Note, the Debtors have entered into minimal other secured debt for equipment leasing and financing (*e.g.* for postage meters).

*iv. General Unsecured Obligations*

18. In the ordinary course of operating their businesses, the Debtors purchase goods and services from hundreds of trade creditors. As of the Petition Date, the Debtors estimate that they owe approximately \$18.6 million to third-party trade creditors. Additionally, the Debtors are obligated to each other for various intercompany obligations owing either from one Debtor to another, with certain intercompany trade obligations owing between the Debtors and certain non-Debtor affiliates.

v. *Equity/ESOP*

19. In 2005, an ESOP was established and purchased Hobbico for \$200.0 million. The transaction was financed with \$100.0 million of senior debt and \$100.0 million of seller notes. Subsequently, Hobbico repaid the seller notes with cash flow and incremental borrowings from the Agent and from Cyprium.

20. As of the petition date the ESOP participants owned 100 percent of the beneficial interest in the Debtor and non-Debtor equity, with 953,887 shares of stock outstanding.

### SUMMARY

9. Pursuant to Bankruptcy Rule 4001(b), (c), and (d), and Local Rule 4001-2(a), the following is a concise summary highlighting the proposed material terms of the DIP Financing, as specified in the Postpetition Loan Agreement and the Interim Order:<sup>4</sup>

| Material Provision  | Summary Description of Material Provision  |
|---|--|
| <b>DIP Credit Agreement Parties</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)                | <p><b><u>Borrowers</u></b>: The Debtors.</p> <p><b><u>Lenders</u></b>: The Postpetition Lenders, as provided and described in the Postpetition Loan Agreement.</p> <p><b><u>Administrative Agent</u></b>: Wells Fargo Bank, National Association.</p>  |
| <b>Amount</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br><br>Postpetition Loan Agreement § | <p>The DIP Facilities consist of: (a) Revolving Credit Loans in an aggregate principal amount up to \$45 million; and (b) a Term Loan in an aggregate principal amount up to \$26.9 million.</p>   |
| <b>Use of Proceeds</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)                             | <p>Debtors are authorized and have agreed to incur Postpetition Debt solely: (1) in accordance with the terms and provisions of the Interim Order; (2) to the extent required to pay those expenses enumerated in the Budget, including, without limitation, the Carveout, as and when such expenses</p> |

<sup>4</sup> This summary is qualified in its entirety by the provisions of the Postpetition Loan Agreement and the Interim Order.



| Material Provision  | Summary Description of Material Provision   |
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| Postpetition Loan Agreement § 8.16<br><br>Interim Order, ¶ 3(b)   | become due and payable, subject to the Permitted Variance and the terms of the Postpetition Documents; (3) to pay Allowable 506(b) Amounts and Postpetition Charges; and (4) as expressly permitted pursuant to the Postpetition Documents. If Postpetition Lenders advance monies to Debtors and Debtors use any such monies other than in accordance with the terms and provisions of the Interim Order, then such advances will be considered to be Postpetition Debt for purposes of the Interim Order.   |
| <b>Conditions of Closing and Borrowing</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br><br>Postpetition Loan Agreement, § 6.1   | Certain customary conditions precedent to extensions of credit, including, among other things, (i) execution of the Postpetition Documents; (ii) receipt by the Agent of certain closing certificates, certain proofs of insurance; (iii) receipt by the Agent of certain financial statements; (iv) receipt by the Agent of an initial Variance Budget; and (v) entry of the Interim Order as acceptable to the DIP Lender.  |
| <b>Roll Up</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)<br><br>Local Rule 4001-2(a)<br><br>Postpetition Loan Agreement, §§ 3.11, 11.10<br><br>Interim Order, ¶¶ 2(d), 3(d)(iii) | <p><b>Roll Up.</b> Upon entry of the Interim Order, except as Agents may otherwise elect in their discretion, Agents are authorized to apply all Cash Collateral now or hereafter in any Agent's or Lender's possession or control as follows: (1) first, to the payment of Prepetition Debt consisting of Allowable 506(b) Amounts, until Paid in Full; (2) second, to the payment of Prepetition Debt consisting of Prepetition Revolving Credit Obligations in accordance with the terms of the Prepetition Documents, until Paid in Full; (3) third, to the payment of all other Prepetition Debt other than the Specified Prepetition Debt in accordance with the terms of the Prepetition Documents, until Paid in Full; (4) fourth, to the payment of Postpetition Debt consisting of Postpetition Charges, until Paid in Full; (5) fifth, to the payment of all other Postpetition Debt in accordance with the terms of the Postpetition Documents, until Paid in Full; and (6) sixth, to the payment of Prepetition Debt consisting of the Specified Prepetition Debt, until Paid in Full.</p> <p>Upon the entry of the Final Order, all of the Prepetition Debt consisting of contingent Prepetition Debt in respect of "Letters of Credit" (as defined in the Prepetition Credit Agreement) will be deemed to be assumed by the Debtors and reissued by the Debtors under the Postpetition Documents as Postpetition Debt. All of the Assumed Prepetition Secured Obligations will be deemed to be assumed by the Debtors and incurred by the Debtors under the Postpetition Documents as Postpetition Debt.</p> |
| <b>DIP Financing Maturity Dates</b>   | <b>Revolving Credit and Term Loan Maturity Dates.</b> The Revolving Credit Loans and the Term Loans will each mature and be due and payable in full   |

| Material Provision   | Summary Description of Material Provision  |
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| <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Postpetition Loan Agreement, §§ 2.1(b), 4.3</p> <p>Interim Order, Exhibit A, ¶ 52</p>              | <p>by the Debtors on the earliest to occur of (a) May 31, 2018, (b) written notice from Administrative Agent to Debtors of the occurrence of an Event of Default and of the "Termination Date" as defined in the Financing Order, and (c) the closing date of a Sale or any other sale of substantially all of the Debtors' assets.</p> <p><b>Termination Date.</b> At Postpetition Agent's election, the earliest to occur of: (a) the date on which Postpetition Agent provides, via facsimile, electronic mail, or overnight mail, written notice to counsel for Debtors, counsel for any Committee, and the United States Trustee of the occurrence and continuance of an Event of Default and the occurrence of the "Termination Date" (as defined in the Interim Order); (b) the date that is thirty (30) days following the entry of the Interim Order if the Final Order is not entered in form and substance satisfactory to Agents by such date; (c) the date of the Final Hearing, if the Interim Order is modified at the Final Hearing in a manner unacceptable to Agents and Lenders; (d) the closing date of the sale of all or substantially all of the assets of the Debtors; (e) the date on which the Aggregate Debt is Paid in Full; and (f) May 31, 2018.</p> |
| <p><b>Interest Rate</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Postpetition Loan Agreement § 5.1</p> <p>Interim Order, ¶ 3(d)(ii)</p> | <p><b>Revolving Credit Loans.</b> The Revolving Credit Loans will bear interest at a per annum rate equal to the Base Rate plus 4.75% (exclusive of any default rate interest that may be imposed under the Postpetition Loan Agreement).</p> <p><b>Term Loans.</b> The Term Loans will bear interest at a per annum rate equal to the Base Rate plus 7.75% (exclusive of any default rate interest that may be imposed under the Postpetition Loan Agreement).</p>  |
| <p><b>Fees</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Postpetition Loan Agreement, § 5.3</p>  | <p><b>Commitment Fee.</b> Commencing on the Closing Date, subject to the Postpetition Loan Agreement, the Borrowers shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee in Dollars (the "<u>Commitment Fee</u>") at a rate per annum equal to the Applicable Margin on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); <u>provided</u>, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar month during the term of this Agreement commencing January 31, 2018 and ending on the date upon which all Obligations arising under the Revolving Credit Facility shall have been Paid In Full. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) pro rata in accordance with such</p>   |

| Material Provision  | Summary Description of Material Provision  |
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|   | <p>Revolving Credit Lenders' respective Revolving Credit Commitment Percentages.</p> <p><b>Other Fees.</b> The Borrowers shall pay to the Administrative Agent for its own account fees in Dollars in the amounts and at the times specified in the Fee Letter. The Borrowers shall pay to the Lenders such fees in Dollars as shall have been separately agreed upon in writing in the amounts and at the times so specified.</p> <p><b>Overadvance Charge.</b> Commencing on the Closing Date, and continuing until the Secured Obligations and Prepetition Secured Obligations have been Paid In Full, the Borrowers will pay to Administrative Agent, for ratable distribution to the Lenders, in immediately available funds, a fully earned and non-refundable monthly overadvance charge of One Hundred Fifty Thousand Dollars (\$150,000) on the last Business Day of each calendar month in which a Borrowing Base Overadvance was in existence on any day during such month.</p>   |
| <p><b>Events of Default</b></p> <p>Fed. R. Bankr. P. 4001(b)(1)(B)(v), (x) and (c)(1)(B)(iii)</p> <p>Postpetition Loan Agreement, §10.1</p> <p>Interim Order, Exhibit A, ¶ 19</p> | <p><b>Event of Default.</b> At Postpetition Agent's election, the occurrence of any of the following: (a) the occurrence and continuance of any "Event of Default" (as defined in the Postpetition Loan Agreement) first arising after the Filing Date under the Postpetition Loan Agreement or any other Postpetition Document; (b) any Debtor fails to timely comply with the covenants or perform any of its obligations in strict accordance with the terms of the Interim Order; (c) any Debtor fails to comply with any Sale Covenant; (d) any Debtor, without the consent of the Agents and Lenders, use, or seek the use of, Cash Collateral other than in accordance with the terms of the Interim Order; (e) any Debtor, without the written consent of Agents and Lenders, file a motion to incur debt secured by a lien with priority equal to, or superior to, the Prepetition Liens or the Postpetition Liens or which is given superpriority administrative expense status under Code § 364(c) other than in accordance with the terms of the Interim Order; (f) Tom O'Donoghue of CR3 Partners LLC is no longer the chief restructuring officer of Debtors for any reason (a "<u>CRO Event</u>") and Debtors have not selected and appointed a replacement chief restructuring officer reasonably acceptable to Postpetition Agent, on terms acceptable to Postpetition Agent, within five (5) business days after such CRO Event; (g) any Debtor files a motion to conduct a Code § 363 sale of all or any part of the Aggregate Collateral on terms unacceptable to Agents and Lenders; (h) any Debtor or other Person files a chapter 11 plan that is not acceptable to Agents and Lenders; (i) entry of any order authorizing any party in interest to reclaim any of the Aggregate Collateral, granting any party in interest relief from the automatic stay with respect to the Aggregate Collateral, or requiring that any Debtor turnover any of the Aggregate Collateral, in each case, prior to the full, final, and</p> |

| Material Provision                  | Summary Description of Material Provision   |
|-------------------------------------|---|
|                                     | <p>indefeasible repayment of all of the Aggregate Debt; (j) entry of any order requiring any Debtor to pay (prior to full, final and indefeasible repayment of all Aggregate Debt) any amounts in respect of claims under Code § 503(b)(9) or otherwise on account of goods shipped to any Debtor prior to the Filing Date; (k) any material representation or warranty made by any Debtor in any certificate, report, or financial statement delivered to any Agent or to any Lender proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty, or statement not misleading); (l) any Debtor (or any affiliate or insider of any Debtor) files a motion in any Case to dismiss any Case or to convert any Case to a case under chapter 7 of the Code; (m) any Case is dismissed or converted to a case under chapter 7 of the Code; (n) a Trustee is appointed or elected in any Case, or an examiner with the power to operate any Debtor's business is appointed in any Case; (o) commencement of any adversary proceeding or contested matter objecting to the extent, validity, amount, perfection, priority or enforceability of all or any portion of the Prepetition Debt, Prepetition Documents, or Prepetition Liens by any Debtor (or any affiliate or insider of any Debtor) or any other Person (provided, that, in the event that any Person (other than a Committee asserting a Challenge pursuant to Paragraph 8 hereof) other than a Debtor (or any affiliate or insider of any Debtor) commences any such adversary proceeding or contested matter, Debtors do not file a responsive pleading within twenty-one (21) days after the commencement date thereof to contest the same); (p) any Debtor's exclusivity period under Code § 1121 is terminated or shortened for any reason whatsoever; (q) Lincoln ceases to be investment banker for Debtors at any time for any reason and the Debtors do not consummate a new "Qualified Investment Banker Engagement" (as defined in the Postpetition Loan Agreement) within ten (10) Business Days after the date on which Lincoln first resigns, is suspended, or has its services modified, or is terminated; (r) any payment is made by any Debtor, or any adequate protection is granted by any Debtor, with respect to any indebtedness of Debtors other than as provided in the Interim Order or otherwise consented to in writing by Agents and approved by the Court; (s) any Debtor fails at any time to pay all accrued administrative expenses and other obligations when due in accordance with, and subject to, the Budget and the Postpetition Documents; (t) the Interim Order is modified, amended, reversed, vacated, or stayed in any manner not consented to in writing by Agents; or (u) the Final Order is not entered within thirty (30) days following the entry of the Interim Order in form and substance satisfactory to Agents.</p> |
| <b>Security and Priority Status</b> | <b>Superpriority Administrative Expense Status; Postpetition Liens.</b> To secure the Postpetition Debt, the Postpetition Debt is granted superpriority administrative expense status under Code § 364(c)(1), with priority over all  |

| Material Provision  | Summary Description of Material Provision  |
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| <p>Fed. R. Bankr. P. 4001(c)(1)(B)(i)</p> <p>Postpetition Loan Agreement § 7.18</p> <p>Interim order, ¶¶ 3(e), 4(b), 4(e)</p> | <p>costs and expenses of administration of the Cases that are incurred under any provision of the Code other than the Carveout. In addition, Postpetition Agent is hereby granted the Postpetition Liens, for the benefit of itself, the Postpetition Lenders, and the other Postpetition Secured Parties, to secure the Postpetition Debt. The Postpetition Liens: (1) are in addition to the Prepetition Liens; (2) under Code §§ 364(c)(2), 364(c)(3), and 364(d), are Priority Liens (subject only to Permitted Priority Liens) without any further action by Debtors or Postpetition Agent, and without the execution, delivery, filing, or recordation of any financing statements, security agreements, control agreements, title notations, mortgages, or other documents or instruments; (3) will not be subject to any security interest or lien that is avoided and preserved under Code § 551; (4) will remain in full force and effect notwithstanding any subsequent conversion or dismissal of any Case; (5) will not be subject to Code § 510(c); and (6) upon entry of the Final Order, will not be subject to any landlord's lien, banker's lien, bailee's rights, carrier's lien, right of distraint or levy, security interest, right of setoff, or any other lien, right, or interest that any bailee, warehousemen, bank, processor, shipper, carrier, or landlord may have in any or all of the Aggregate Collateral. Without limiting the foregoing, Debtors must deliver to Postpetition Agent any such financing statements, security agreements, control agreements, mortgages, title notations, and other documents and instruments as Postpetition Agent may reasonably request from time to time in its discretion. Further, Prepetition Agent will serve as agent for Postpetition Agent for purposes of perfecting Postpetition Agent's security interest in any Postpetition Collateral that may require perfection by possession, control, or title notation, including, without limitation, under the Control Agreements. In addition, all Prepetition Third Party Documents will be deemed to be for the benefit of Postpetition Agent and the Postpetition Secured Parties without any further order of Court or action by any Person. Without limiting the foregoing, Postpetition Agent, for itself and the Postpetition Secured Parties, has, and will be deemed to have, a perfected Postpetition Lien on all existing deposit accounts of each Debtor and any new deposit account that any Debtor may establish on or after the date hereof without any further action by Debtors or Postpetition Agent.</p> <p>The Postpetition Collateral includes all of the real property and personal property of the Debtors of any description whatsoever, wherever located, and whenever arising or acquired, including, among other things, effective upon entry of the Final Order, all claims and causes of action under chapter 5 of the Bankruptcy Code, including, without limitation, Code §§ 542, 544, 545, 547, 548, 549, 550, 551, and 553, and all proceeds thereof.</p> <p><b>Priority of Prepetition Liens; Allowance of Prepetition Agent's and the Prepetition Secured Parties' Claim.</b> Subject to the terms of Paragraph 8 of the Interim Order: (1) the Prepetition Liens constitute Priority Liens, subject</p> |

| Material Provision  | Summary Description of Material Provision   |
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|   | <p>only to the Postpetition Liens and Permitted Priority Liens; (2) the Prepetition Debt constitutes the legal, valid, and binding obligation of each Debtor, enforceable in accordance with the terms of the Prepetition Documents; (3) no offsets, defenses, or counterclaims to the Prepetition Debt exist, and no portion of the Prepetition Debt is subject to avoidance, recharacterization or subordination pursuant to the Code or applicable non-bankruptcy law; and (4) Prepetition Agent's and Prepetition Secured Parties' claim with respect to the Prepetition Debt is for all purposes an allowed claim within the meaning of Code § 506, exclusive of accrued and accruing Allowable 506(b) Amounts.</p> <p><b>Replacement Liens.</b> Prepetition Agent is granted the Replacement Liens, for the benefit of itself and the Prepetition Secured Parties, as security for the complete payment and performance of the Prepetition Debt. The Replacement Liens: (1) are in addition to the Prepetition Liens; (2) are properly perfected, valid, and enforceable liens without any other or further action by Debtors or Prepetition Agent, and without the execution, filing, or recordation of any financing statement, security agreement, control agreement, mortgage, title notation, or other document or instrument; and (3) will remain in full force and effect notwithstanding any subsequent conversion or dismissal of any Case. Without limiting the foregoing, Debtors are authorized to, and must, execute and deliver to Prepetition Agent any such financing statements, security agreements, control agreements, mortgages, title notations and other documents and instruments as Prepetition Agent may request from time to time in its discretion in respect of the Replacement Liens.</p> |
| <p><b>Cash Collateral</b></p> <p>Fed. R. Bankr. P. 4001(b)(1)(B)</p> <p>L.R. 4001-2(a)(ii)</p> <p>Postpetition Loan Agreement, § 5.14</p> <p>Interim Order, ¶ 2</p> | <p><b>Remittance of All Cash Collateral to Postpetition Agent.</b> Debtors must deposit all Cash Collateral now or hereafter in their possession or control into the Blocked Account (or otherwise remit such Cash Collateral to Postpetition Agent in a manner satisfactory to Postpetition Agent) promptly upon Debtors' receipt thereof for application in accordance with Paragraph 2(d) of the Interim Order.</p> <p><b>Application of Cash Collateral.</b> Except as Agents may otherwise elect in their discretion, Agents are authorized to apply all Cash Collateral now or hereafter in any Agent's or Lender's possession or control as follows: (1) first, to the payment of Prepetition Debt consisting of Allowable 506(b) Amounts, until Paid in Full; (2) second, to the payment of Prepetition Debt consisting of Prepetition Revolving Credit Obligations in accordance with the terms of the Prepetition Documents, until Paid in Full; (3) third, to the payment of all other Prepetition Debt other than the Specified Prepetition Debt in accordance with the terms of the Prepetition Documents, until Paid in Full; (4) fourth, to the payment of Postpetition Debt consisting of Postpetition Charges, until Paid in Full; (5) fifth, to the payment of all other</p>  |

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|   | <p>Postpetition Debt in accordance with the terms of the Postpetition Documents, until Paid in Full; and (6) sixth, to the payment of Prepetition Debt consisting of the Specified Prepetition Debt, until Paid in Full. All such applications to Postpetition Debt shall be final and not subject to challenge by any Person, including, without limitation, any Debtor, the Committee, any Trustee, or Cyprum. All such applications to Prepetition Debt shall be final, subject only to the right of parties in interest to seek a determination in accordance with Paragraph 8 below that any such application resulted in the payment of a claim that was not an allowed secured claim of Prepetition Agent and Prepetition Lenders. Any amounts that are determined by the Court as a result of any such objection or determination to have been improperly applied to the Prepetition Debt will be first applied to pay Postpetition Debt consisting of Postpetition Charges and then to all other Postpetition Debt, dollar-for-dollar, until Paid in Full.</p> <p><b>Prohibition Against Use of Cash Collateral.</b> Unless otherwise consented to by Agent in writing, in Agent's discretion, Debtors may not use, seek to use, or be permitted to use any Cash Collateral for any purpose until the Aggregate Debt is Paid in Full; provided, however, that Debtors may use Cash Collateral solely as provided for in the Interim Order.</p>  |
| <p><b>Adequate Protection</b></p> <p>Fed. R. Bankr. P. 4001(b)(1)(B)(iv), (c)(1)(B)(ii)</p> <p>L.R. 4001-2(a)(ii)</p> <p>Postpetition Loan Agreement § 8.22,</p> <p>Interim order, ¶¶ 4, (d), (e)</p> | <p><b>Adequate Protection.</b> As adequate protection for the use of the collateral securing the Prepetition Secured Obligations, including, without limitation, cash collateral (collectively, the "<u>Existing Collateral</u>"), (a) Borrowers shall make payments to the Prepetition Agent and Prepetition Lenders consisting of (i) payments of cash interest on a current basis, calculated at the non-default rate until Paid In Full, and (ii) payments in cash on a current basis of all reasonable fees, costs and expenses of their respective legal counsel (including local counsel) and advisors; <u>provided, however</u>, that all of such fees, costs and expenses provided as adequate protection payments under this clause (a) shall be paid whether or not the same are included in the Variance Budget or the Budget, and none of such fees, costs and expenses provided as adequate protection payments under this clause (a) shall be subject to approval by the Bankruptcy Court or by the U.S. Trustee, and no recipient of any such payment shall be required to file any interim or final fee application with the Bankruptcy Court in respect of same; provided that the Prepetition Agent shall provide any applicable notice in accordance with the Financing Order; (b) Borrowers agree to provide the Prepetition Agent with replacement liens and a Superpriority Claim pursuant to § 507(b) of the Bankruptcy Code, in each case, to the extent of any post-petition diminution in value of Existing Collateral, subject, in each case and as applicable, to the Carveout; (c) unless Prepetition Agent may otherwise subsequently agree in writing in its discretion, any sale or other disposition of all or any portion of the Aggregate Collateral outside the ordinary course of Debtors' businesses must be for cash consideration until the Aggregate Debt has been Paid in</p> |

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|  | Full pursuant to the Prepetition Documents and the Postpetition Documents; and (d) such other or additional adequate protection shall be provided as the parties may agree to in the Financing Order. The foregoing will be without prejudice to Prepetition Agent's right to later request or otherwise seek additional forms of adequate protection, including additional cash payments.  |
| <p><b>Postpetition Charges</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Interim Order, ¶ 17</p>   | <p><b>Postpetition Charges.</b> All Postpetition Charges must be promptly paid by Debtors in accordance with the Interim Order and the Postpetition Documents, without need for filing any application with the Court for approval or payment thereof, within ten (10) business days of Postpetition Agent's written notice to Debtors, any Committee, and the United States Trustee.</p>   |
| <p><b>Additional Debt</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Postpetition Loan Agreement, § 10.1(u)(xiv)</p> <p>Interim Order, ¶ 3(f)</p> | <p>Debtors may not incur or seek to incur debt secured by a lien which is equal to, or superior to, the Prepetition Liens or the Postpetition Liens, or which is given superpriority administrative expense status under Code § 364(c)(1), unless, in addition to the satisfaction of all requirements of Code § 364: (1) Agents have consented to such order; (2) at the time such an order is entered, there is no Postpetition Debt outstanding, and no obligation of Postpetition Lenders to extend Postpetition Debt; or (3) such credit or debt is first used to, and is sufficient to, Pay in Full the Aggregate Debt.</p>   |
| <p><b>Carveout</b></p> <p>Fed. R. Bankr. P. 4001(c)(1)(B)</p> <p>Local Rule 4002-2(a)(i)(F)</p> <p>Interim Order, ¶ 6</p>                            | <p><b>Carveout Terms.</b> The Carveout with respect to each Carveout Professional: (1) equals an aggregate amount not to exceed the lesser of (i) the aggregate amount provided in the applicable line item in the Budget for such Carveout Professional for the period commencing on the Filing Date and ending on the Termination Date; provided that any such Carveout Professional may utilize any unused budget amount from an applicable week for an overage in another week in the Budget during the period from the Filing Date until the Termination Date so long as the aggregate amount for such Carveout Professional does not exceed the aggregate line item in the Budget for such Carveout Professional for the period commencing on the Filing Date and ending on the Termination Date (subject to the proviso for Neal, Gerber &amp; Eisenberg LLP and Morris, Nichols, Arsht &amp; Tunnell LLP, CR3 Partners, LLC and Keystone Consulting Group, LLC in paragraph 6(c) below), and (ii) the aggregate amount of allowed fees and expenses that accrue during the period commencing on the Filing Date and ending on the Termination Date; (2) will be reduced dollar-for-dollar by any payments of fees and expenses to such Carveout Professional; and (3) includes any Specified Retainer held by such Carveout Professional; <u>provided</u>, that, with respect to the foregoing sub-section (3), each Carveout Professional holding a Specified Retainer</p> |



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|                    | <p>may elect to maintain its Specified Retainer until the occurrence of the Termination Date in order to pay any allowed but unpaid Carveout amounts owing to such Carveout Professional as of the Termination Date, in each case, subject to the terms and conditions of the Interim Order. Subject to the last sentence of this Paragraph 6(a), upon the Termination Date, the Postpetition Lenders will provide Postpetition Debt to Debtors, to be used by Debtors for the sole purpose of funding Carveout Professionals for fees and expenses first incurred after the Termination Date, in the aggregate amount of \$50,000 (minus the amount of any remaining Specified Retainers, net of any professional fees and expenses accrued and unpaid as of the Termination Date). Postpetition Agent and Postpetition Lenders have, and will retain, the continuing right from time to time, in their discretion, to reserve against the DIP Commitment and availability in respect of all of the Carveout obligations from time to time, including, without limitation, by establishing one or more "Reserves" (as such term is defined in the Postpetition Loan Agreement) under the Postpetition Loan Agreement. Except as set forth in this paragraph, Postpetition Agent and Postpetition Lenders will not have any obligation to fund any fees, costs, expenses, or any other amounts of any Carveout Professional accrued at any time on, prior to, or after the Termination Date. After the occurrence of the Termination Date, any surplus portion of any prepetition or postpetition retainers of any Carveout Professional (including any Specified Retainer) that may remain after the payment of all allowed Carveout amounts payable to such Carveout Professional under the Carveout shall be returned to the Agents within three (3) business days after the date on which all such allowed Carveout amounts were first paid in full for application in accordance with Paragraph 2(d) of the Interim Order. Nothing contained herein constitutes, or may be construed to be, consent by any Person to the allowance of any fees, costs, expenses, or other amount of any Carveout Professional, and shall not affect the rights of Debtors, Agents, Lenders, any Committee, the United States Trustee, or any other party in interest to object to the allowance or payment of any amounts incurred or requested. For the avoidance of doubt, Lincoln is a Carveout Professional for purposes of the Carveout, the Carveout constitutes a Permitted Priority Lien and the Carveout for Lincoln is subject to the terms and conditions of the Lincoln Engagement Agreement, the Lincoln Consent and Acknowledgment, and the Interim Order to the extent approved by the Court and except as otherwise agreed to in writing by Agents and Lincoln.</p> <p><b>Lincoln Carveout.</b> For the avoidance of doubt, notwithstanding anything to the contrary in this paragraph 6 or the Interim Order (including, without limitation, the occurrence of the Termination Date), Lincoln shall be entitled to a Transaction Fee under the terms and conditions set forth in the Lincoln Engagement Letter, and such Transaction Fee shall be (a) paid in cash or escrowed from the proceeds of such Transaction or as otherwise applicable at closing of a Transaction pending the Court's final approval of Lincoln's</p> |

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|  | <p>fees and expenses, or (b) in the event of a Sale Transaction that is consummated through a Credit Bid (each as defined in the Lincoln Engagement Letter), paid in cash or escrowed by the Agent, the Lenders and/or their designee(s) pending the Court's final approval of Lincoln's fees and expenses, as applicable, pursuant to a further advance under the DIP or a direct cash transfer.</p> <p><b>Carveout Usage.</b> No portion of the Carveout and no Postpetition Debt or Aggregate Collateral may be used to pay any fees or expenses incurred by any Person, including any Debtor, any Committee, or any Carveout Professional, in connection with claims or causes of action adverse (or which claim an interest adverse) to any Agent, any Lender, any other Secured Party, or any of their respective rights or interests in the Aggregate Collateral, the Postpetition Documents, or the Prepetition Documents, including, without limitation, (1) preventing, hindering, or delaying any Agent's or any other Secured Party's enforcement or realization upon any of the Aggregate Collateral or the exercise of their rights and remedies under the Interim Order, any Postpetition Document, any Prepetition Document, or applicable law, in each case, once an Event of Default has occurred, (2) using or seeking to use any Cash Collateral or incurring indebtedness in violation of the terms hereof, or selling any Aggregate Collateral without Agents' and Lenders' written consent, or (3) objecting to, or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any Aggregate Debt, any Prepetition Document, any Postpetition Document, or any mortgages, liens, or security interests with respect thereto or any other rights or interests of any Agent or any other Secured Party, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Code, against any Agent or any other Secured Party; <u>provided, however</u>, that the foregoing shall not apply to costs and expenses, in an aggregate amount not to exceed \$25,000, incurred by all of the Committee's Carveout Professionals in connection with the investigation of a potential Challenge in accordance with Paragraph 8 of the Interim Order; <u>provided, further, however</u>, that the Carveout may be used to pay fees and expenses incurred by the Carveout Professionals in connection with the negotiation, preparation, and entry of the Interim Order or any amendment hereto consented to by Postpetition Agent.</p> |
| <p><b>Waiver of § 506(c)</b><br/><br/>           Fed. R. Bankr. P. 4001(c)(1)(B)(x)<br/><br/>           Local Rules 4002-2(a)(i)(C), (H)</p> | <p>Among other things, in the exercise of their business judgment, subject to entry of the Final Order, Debtors agree that there will be no surcharge of the Aggregate Collateral for any purpose unless agreed to in writing by Agents and Lenders, and effective upon entry of the Final Order, each Debtor, on behalf of its estate, will be deemed to have waived any and all rights, benefits, or causes of action under Code § 506(c), the enhancement of collateral provisions of Code § 552, and under any other legal or equitable</p>  |

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| Postpetition Loan Agreement, § 10.1(u)(v)<br><br>Interim Order, ¶ 7  | doctrine (including, without limitation, unjust enrichment) as they may relate to, or be asserted against, any Agent, any Lender, or any of the Aggregate Collateral.  |
| <b>Representations and Warranties</b><br><br>Red. R. Bankr. P. 4001(c)(1)(B)<br><br>Postpetition Loan Agreement, Art. 7                          | The Postpetition Loan Agreement contains representations and warranties customarily found in loan agreements for similar debtor in possession financings, including, without limitation, with respect to organization in good standing, validity of agreements, tax status, and compliance with laws.  |
| <b>Indemnification</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)(ix)<br><br>Postpetition Loan Agreement, § 12.3(b)<br><br>Interim Order, ¶ 15       | Debtors will indemnify and hold harmless Prepetition Agent and Prepetition Lenders, and Postpetition Agent and Postpetition Lenders, in accordance with the terms of the Prepetition Documents and the Postpetition Documents, respectively.   |
| <b>Right to File Plan</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)(v)<br><br>Postpetition Loan Agreement, § 10(u)(xiii)<br><br>Interim Order, ¶ 11 | Unless Agents subsequently consent in writing, Debtors will not seek entry of an order confirming any plan in any Case unless the Aggregate Debt, subject to any Aggregate Debt successfully challenged by any party in interest with standing, shall be Paid in Full on the earlier of (a) the effective date of such plan or (b) the Termination Date, notwithstanding anything to the contrary in any such order confirming a plan. |
| <b>Modification of the Automatic Stay</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)(iv)<br><br>Interim Order, ¶ 19                                  | The automatic stay of Code § 362 is modified with respect to Agents and Lenders to the extent necessary to effectuate the provisions of the Interim Order, including, without limitation, after the Termination Date to permit Agents and Lenders to exercise their respective rights contemplated by Paragraph 5 of the Interim Order.  |

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| <b>Releases</b><br><br>Fed. R. Bankr. P. 4001(c)(1)(B)(viii)<br><br>Interim Order, ¶ 22 | Upon the date that the Postpetition Debt is Paid in Full and prior to the release of the Postpetition Liens, each Debtor, on behalf of its estate and itself, must execute and deliver to Postpetition Agent, Postpetition Lenders, the other Postpetition Secured Parties, and each of their respective successors and assigns, and each of their respective present and former affiliates, shareholders, subsidiaries, divisions, predecessors, members, managers, directors, officers, attorneys, employees, agents, advisors, principals, consultants, and other representatives (collectively, the “ <u>Releasees</u> ”), a general release of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every kind, nature, and description, that Debtors (or any of them) had, have, or hereafter can or may have against the Releasees (or any of them), whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, in equity, or otherwise, in respect of events that occurred on or prior to the date on which the Postpetition Debt is Paid in Full. |

### **BASIS FOR RELIEF**

**A. THE REQUESTED RELIEF SHOULD BE GRANTED PURSUANT TO SECTIONS 364(c) AND 364(d)(1) OF THE BANKRUPTCY CODE.**

23. As set forth above, the Debtors’ ability to maximize the value of their estates and successfully sell their business operations hinges upon their being able to access postpetition financing. Section 364 of the Bankruptcy Code distinguishes among (a) obtaining unsecured credit in the ordinary course of business, (b) obtaining unsecured credit outside the ordinary course of business, and (c) obtaining credit with specialized priority or on a secured basis. Pursuant to section 364(c) of the Bankruptcy Code, if a debtor cannot obtain postpetition credit on an unsecured basis, a court may authorize such debtor to obtain credit or incur debt that is entitled to super-priority administrative expense status, secured by a senior lien on unencumbered property or secured by a junior lien on encumbered property. *See* 11 U.S.C. § 364(c).

24. Under section 364 of the Bankruptcy Code, courts also may authorize postpetition credit secured by a senior or equal lien on encumbered property if the debtor cannot obtain credit elsewhere and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) of the Bankruptcy Code provides, in relevant part, that a 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 [debtor] 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)(1).

**I. The Debtors Have Exercised Their Business Judgment in Entering Into the DIP Facility.**

25. A debtor’s decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“cases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest.”); *see also In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of postpetition financing requires, *inter alia*, an exercise of “sound and reasonable business judgment.”); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (noting that the interim loan, receivable facility and asset based facility were approved because they “reflect[ed] sound and prudent business judgment . . . [were] reasonable under the circumstances and in the best interest of [the debtor] and its creditors.”).

26. Bankruptcy courts routinely accept a debtor's business judgment on many business decisions, including the decision to borrow money. *See, e.g., In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) (“[b]usiness judgments should be left to the board room and not to this Court”). Further, one court has noted that “[m]ore exacting scrutiny [of the debtor's business decisions] would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

27. Bankruptcy courts generally will defer to a debtor in possession's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. *See In re Curlew Valley Assocs.*, 14 B.R. 506, 511–13 (Bankr. D. Utah 1981); *see also In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving interim loan, receivables facility and asset-based facility based upon prudent business judgment of the debtor). Bankruptcy courts generally will not second-guess a debtor in possession's business decisions involving “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code.” *Curlew Valley*, 14 B.R. at 513–14.

28. The Debtors have exercised sound business judgment in determining the appropriateness of the DIP Facility and have satisfied the legal prerequisites to incur debt on the terms and conditions set forth in the Postpetition Loan Agreement. The use of Cash Collateral alone is insufficient to meet the Debtors' working capital needs to operate their businesses in the ordinary course. The Postpetition Loan Agreement contains terms and conditions that are the best available under the circumstances and provides the Debtors with sufficient liquidity during the period of the Budget. In addition, the Interim Order preserves the rights of other parties in

interest, including any statutory committee of unsecured creditors, to investigate and challenge the validity, enforceability, perfection, and priority of the Prepetition First Priority Obligations and the liens and security interests granted in connection therewith. This Court has previously approved similar debtor-in-possession financing agreements where the debtor was not able to obtain postpetition financing under other conditions. *See, e.g., In re Imris, Inc., et al.*, Case No. 15-11133 (Bankr. D. Del. May 25, 2015); *In re Cal Dive Int'l, Inc., et al.*, Case No. 15-10458 (Bankr. D. Del. April 20, 2015); *In re Digital Domain Media Group, Inc., et al.*, Case No. 12-12568 (BLS) (Bankr. D. Del. Nov. 7, 2012); *In re Real Mex Restaurants, Inc. et al.*, Case No. 11-13122 (BLS) (Bankr. D. Del. Nov. 9, 2011); *In re Landsource Communities Development LLC, et al.*, Case No. 08-11111 (KJC) (Bankr. D. Del. July 21, 2008)

29. The funds provided by the DIP Facilities are essential to enable the Debtors to continue to operate during the course of these chapter 11 cases while working towards a sale transaction that is in the best interest of the estates. Indeed, failure to obtain approval of the DIP Facility will lead to a wind-down of the Debtors' business operations which, in turn, will preclude any sale of the Debtors' assets and adversely affect the value ultimately received by stakeholders.

30. Accordingly, pursuant to sections 364(c) and (d) of the Bankruptcy Code, the Debtors respectfully submit that they should be granted authority to obtain financing from the Postpetition Lender on the terms set forth in the Postpetition Loan Agreement.

## **II. The DIP Facility Represents the Best Financing Available.**

31. A debtor seeking financing under section 364 of the Bankruptcy Code must make a reasonable effort to seek other sources of unsecured credit, but is granted deference in acting in accordance with its business judgment and, indeed, is not required to seek credit from every possible source. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37-40 (Bankr. S.D.N.Y.

1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *Bray v. Shenandoah Fed. Sav. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”).

32. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court’s finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met); *In re Ames Dep’t Stores*, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

33. The Debtors and their advisors conducted a marketing process pre-petition to solicit financing proposals. The Debtors have determined that the terms and conditions of the DIP Facility are the best available under the circumstances and address the Debtors’ working capital needs, and no other entity was willing to provide financing on any better terms, particularly in light of the Debtors’ existing capital structure. Postpetition financing is not otherwise available without granting, pursuant to section 364(c)(1) of the Bankruptcy Code,



claims having priority over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, and securing such indebtedness and obligations with the security interests in and the liens upon the Postpetition Collateral pursuant to section 364(c) and (d) of the Bankruptcy Code (in each case subject to the Carveout and Permitted Priority Liens). The Debtors are unable to obtain the necessary postpetition financing that they need on terms more favorable than those provided by the DIP Facilities. Accordingly, the Debtors' efforts to obtain postpetition financing satisfy the statutory requirements of section 364(c) of the Bankruptcy Code.

**III. The DIP Facilities Are Necessary to Maintain the Debtors' Ongoing Business Operations and Successfully Consummate a Sale of the Debtors' Assets in These Cases.**

34. The DIP Facilities, if approved, will provide essential working capital, allowing the Debtors to maintain the value of their assets and their ongoing business operations while working towards a sale of the Debtors' assets in these chapter 11 cases. In addition, the DIP Facilities will provide the Debtors' various constituencies, including employees, vendors, and service providers, with confidence in the Debtors' ability to maintain operations while working towards a sale transaction.

35. If the relief sought in this Motion is denied or delayed, the Debtors likely will experience immediate business disruptions, and the Debtors' ability to consummate a sale transaction and maximize value for the estates may be irreparably damaged. Accordingly, the DIP Facilities are necessary to maximize value for the Debtors' estates and inures to the benefit of creditors and all parties in interest.

**IV. The Terms of the DIP Facilities Are Fair, Reasonable, and Adequate Under the Circumstances.**

36. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record at 740:4–6, In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) (“[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions reasonable here and now.”).

37. The terms and conditions of the DIP Facilities were negotiated in good faith and at arm’s length among the parties, culminating in the Postpetition Loan Agreement that is designed to provide the Debtors with essential working capital and maintain the Debtors’ ongoing business operations while working towards a sale of the Debtors’ assets. Indeed, when viewed in its totality, the DIP Facilities reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties and is supported by fair consideration.

**V. The Consensual Priming of Liens Should be Approved**

38. As previously mentioned, if a debtor is unable to obtain credit under the provisions of section 364(c) alone, 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). To justify a priming lien, 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 at 1088; *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). 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)). Consent by a secured creditor to priming, however, obviates the need to show adequate protection. *See Anchor Savs. Bank FSB*, 99 B.R. at 122 (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”).

39. Both the Prepetition Agent, on behalf of the Prepetition Secured Parties, and Cyprium have consented to the priming of their liens. Section 7.18 of the Postpetition Loan Agreement provides the Postpetition Agent with a first priority lien on all of the Collateral, subject only to the Permitted Priority Liens. Additionally, pursuant to section 5 of the Subordination Agreement, Cyprium, among other things, waived its right to object to the Debtors’ postpetition financing, the grant of any lien to the Postpetition Agent for the benefit of the Lenders, and to seek adequate protection. Accordingly, both the Prepetition Agent and Cyprium have consented to the priming of their liens, and the consensual priming of the liens should be approved.

**VI. Section 364(e) Protections Should Apply to the DIP Facility.**

40. The terms and conditions of the DIP Facility are fair and reasonable, and were negotiated extensively by well-represented, independent parties in good faith and at arm’s length. Accordingly, the Court should find that the Postpetition Lender is a “good faith” lender within

the meaning of Bankruptcy Code section 364(e), and is entitled to all of the protections afforded by that section.

**B. THE DEBTORS' REQUEST FOR USE OF CASH COLLATERAL AND THE PROPOSED ADEQUATE PROTECTION IS APPROPRIATE.**

41. The Debtors' use of property of the estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part 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 [debtor] 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).

42. Pursuant to section 363(c)(2) of the Bankruptcy Code, the Court may authorize the Debtors to use cash collateral as long as the applicable secured creditors consent or are adequately protected. *See In re McCormick*, 354 B.R. 246, 251 (Bankr. C D. Ill. 2006) (to use the cash collateral of a secured creditor, the debtor must have the consent of the secured creditor or must establish to the Court that the secured creditor's interest in the cash collateral is adequately protected). "Cash Collateral" is defined as, "cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the estate and an entity other than the estate have an interest." 11 U.S.C. § 363(a).

43. The Debtors have an urgent need for the immediate use of the Cash Collateral pending the final hearing on this Motion and seek to use Cash Collateral existing on or after the Petition Date in exchange for the adequate protection set forth in the Interim Order and Postpetition Loan Agreement, which has been consented to by the Prepetition Agent on behalf of the Prepetition Lenders. The Debtors require the use of the Cash Collateral to provide adequate protection to the Prepetition Agent and the Prepetition Lenders of their interests in the

Prepetition Collateral. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens and other forms of relief. *See In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from the diminution in value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (internal citations omitted). In addition, the Prepetition Agent and Prepetition Lenders have consented to the use of Cash Collateral as requested herein as a condition to providing the DIP Financing.

**C. MODIFICATION OF THE AUTOMATIC STAY ON A LIMITED BASIS IS WARRANTED.**

44. The relief requested herein contemplates a modification of the automatic stay pursuant to Bankruptcy Code section 362 to the extent necessary to permit the Prepetition and Postpetition Agents to exercise, upon the occurrence of the Termination Date, all rights and remedies provided for in the Prepetition Documents, Postpetition Documents, the Interim Order and the Final Order, and to take various actions without further order of or application to the Court.

45. Stay modification provisions of this sort are ordinary and usual features of debtor in possession financing facilities and, in the Debtors’ business judgment, are reasonable under the present circumstances. Accordingly, the Court should modify the automatic stay to the extent contemplated by the Postpetition Documents and the proposed DIP Orders.

**D. INTERIM APPROVAL AND SCHEDULING OF FINAL HEARING.**

46. As set forth above, Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code or to obtain credit under section 364 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and to authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

47. Absent relief on an interim basis pursuant to the Interim Order, the Debtors will be unable to satisfy their immediate and projected payment obligations, including payroll and other operating expenses. Given the immediate and irreparable harm to be suffered by the Debtors absent interim relief, the Debtors respectfully request that the Court schedule and conduct a preliminary hearing on the Motion and (a) authorize the Debtors, from the entry of the Interim Order until the Final Hearing, to obtain credit under the terms contained in the Postpetition Loan Agreement and to utilize Cash Collateral, and (b) schedule the Final Hearing.

**E. WAIVER OF BANKRUPTCY RULES 6004(a) AND (h).**

48. The Debtors believe an efficient and expeditious approval and implementation of the DIP Facilities is in the best interests of their creditors and other parties in interest, including patients. Accordingly, the Debtors seek waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of orders authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Notice**

10. The Debtors have provided notice of this Motion to: (i) the Office of the United States Trustee; (ii) the Internal Revenue Service; (iii) the Securities and Exchange Commission;

(iv) the Delaware Secretary of State; (v) the Delaware Secretary of the Treasury; (vi) the Debtors' twenty (20) largest unsecured creditors; (vii) counsel to Wells Fargo Bank, N.A., as administrative agent to the prepetition and postpetition lenders; (viii) counsel to Cyprium Investors IV AIV I LP; and (ix) all parties requesting notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

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

*(Signature page follows)*

**CONCLUSION**

WHEREFORE, the Debtors request entry of the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: January 10, 2017  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Curtis S. Miller

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*Proposed Co-Counsel to the Debtors and  
Debtors in Possession*



**Exhibit A**

**Proposed Interim Order**

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

IN RE: ) Chapter 11  
 )  
HOBBICO, INC., *et al.*,<sup>1</sup> ) Case No. 18-10055 (KG)  
 )  
Debtors. ) (Jointly Administered)

**ORDER AUTHORIZING DEBTORS TO: (A) USE CASH COLLATERAL ON AN  
EMERGENCY BASIS PENDING A FINAL HEARING; (B) INCUR POSTPETITION  
DEBT ON AN EMERGENCY BASIS PENDING A FINAL HEARING; AND (C) GRANT  
ADEQUATE PROTECTION AND PROVIDE SECURITY AND OTHER RELIEF TO  
WELLS FARGO BANK, NATIONAL ASSOCIATION, AS AGENT,  
AND THE OTHER SECURED PARTIES**

This matter came before this Court on the motion ("Motion") of Hobbico, Inc., an Illinois corporation, and the other Debtors requesting that this Court enter an order authorizing Debtors to (a) use certain Cash Collateral on an emergency basis pending a Final Hearing, (b) incur certain Postpetition Debt on an emergency basis pending a Final Hearing, and (c) grant adequate protection and provide security and other relief to Wells Fargo Bank, National Association, as administrative agent ("Prepetition Agent") for the lenders party from time to time to the Credit Agreement ("Prepetition Lenders") and the other Prepetition Secured Parties, and Wells Fargo Bank, National Association, as administrative agent ("Postpetition Agent"; together Prepetition Agent, "Agents") for the lenders party from time to time to the Postpetition Loan Agreement ("Postpetition Lenders"; together with Prepetition Lenders, including any successors or assigns of the Prepetition Lenders or the Postpetition Lenders, the "Lenders") and the other Postpetition Secured Parties. All capitalized terms used but not otherwise defined herein have the meanings assigned to them in Exhibit A attached hereto.

This Order constitutes findings of fact and conclusions of law under Fed. R. Bankr. P. 7052 and will take effect and be fully enforceable as of the Filing Date.

Having examined the Motion, being fully advised of the relevant facts and circumstances surrounding the Motion, and having completed a hearing pursuant to Code §§ 363

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Hobbico, Inc. (9545); Axial R/C Inc. (0233); Estes-Cox Corp. (2196); Great Planes Model Manufacturing, Inc. (5259); Revell Inc. (8545); Tower Hobbies, Inc. (5185); and United Model, Inc. (5302). The Debtors' headquarters are located at 2904 Research Road, Champaign, Illinois 61822.

and 364 and Fed. R. Bankr. P. 4001(b) and (c), and objections, if any, having been withdrawn, resolved, or overruled by the Court, **THE MOTION IS GRANTED, AND THE COURT HEREBY FINDS THAT:**

A. On the Filing Date, Debtors filed voluntary petitions for relief under chapter 11 of the Code. Debtors have retained possession of their property and continue to operate their respective businesses as debtors in possession pursuant to Code §§ 1107 and 1108.

B. The Court has jurisdiction over the Cases and this proceeding under 28 U.S.C. § 1334. Determination of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2). Venue over the Motion is proper under 28 U.S.C. § 1409(a).

C. No Committee has been appointed in these Cases.

D. Subject to Paragraph 8 of this Order, each Debtor admits, stipulates, and agrees that:

1. the Prepetition Documents evidence and govern the Prepetition Debt, the Prepetition Liens, and the prepetition financing relationship among Debtors, Prepetition Agent, Prepetition Lenders, and the other Prepetition Secured Parties;

2. the Prepetition Debt constitutes the legal, valid, and binding obligation of Debtors, enforceable in accordance with the terms of the Prepetition Documents, all of which are deemed to be reaffirmed by the parties thereto;

3. as of the Filing Date, Debtors are each liable for the payment and performance of the Prepetition Debt, and the Prepetition Debt is an allowed claim in an amount not less than \$75,045,103.97, exclusive of (x) accrued and accruing Allowable 506(b) Amount, (y) Prepetition Debt in respect of "Secured Cash Management Agreements" (as defined in the Credit Agreement) and (z) Prepetition Debt in respect of "Secured Hedge Agreements" (as defined in the Credit Agreement);

4. no offsets, defenses, or counterclaims to the Prepetition Debt exist, and no portion of the Prepetition Debt is subject to contest, objection, recoupment, defense, counterclaim, offset, avoidance, recharacterization, subordination, or other claim, cause of action, or challenge of any nature under the Code, applicable non-bankruptcy law, or otherwise;

5. the Prepetition Liens are Priority Liens, subject to Permitted Priority Liens and Postpetition Liens and secure payment of all of the Prepetition Debt; and

6. Debtors do not have, and each of the Debtors hereby absolutely, unconditionally, and irrevocably releases, remises, and discharges, and is forever barred from bringing or asserting, any claims, defenses, or setoff rights relating to the Prepetition Documents, the Prepetition Liens, the Prepetition Debt, or otherwise, against Prepetition Agent, any Prepetition Lender, any other Prepetition Secured Party, and each of their respective successors and assigns, and their respective present and former shareholders, members, managers, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, advisors, principals, employees, consultants, agents, legal representatives, and other representatives.

E. Prepetition Agent and Prepetition Secured Parties have consented to the terms of this Order and are entitled to adequate protection as set forth herein pursuant to Code §§ 361, 362, 363, and 364 for any decrease in the value of their interests in the Prepetition Collateral from and after the Filing Date.

F. Nothing in this Order will modify any of the terms or provisions of the Cyprium Subordination and Intercreditor Agreement.

G. Debtors have agreed to remit Cash Collateral to Agents, and Debtors need to incur Postpetition Debt, as provided herein through the conclusion of the Final Hearing in order to prevent immediate and irreparable harm to Debtors' estates and to minimize disruption to, and avoid the termination of, their business operations. Entry of this Order will also enhance the possibility of maximizing the value of Debtors' businesses in connection with an orderly sale or other disposition of the Aggregate Collateral.

H. Debtors are unable to obtain unsecured credit allowable under Code § 503(b)(1) sufficient to finance the operation of their businesses. Except as provided below, Debtors are unable to obtain credit allowable under Code §§ 364(c)(1), (c)(2), or (c)(3) on terms more favorable than those offered by Postpetition Agent and Postpetition Lenders. An immediate need exists for the Debtors to obtain Postpetition Debt in order to continue operations and to administer and preserve the value of their estates. The Debtors, as of the Filing Date, do not have sufficient cash resources to finance their ongoing operations and require the availability of

working capital from Postpetition Debt, the absence of which would immediately and irreparably harm the Debtors, their estates, and creditors.

I. The terms of the Postpetition Debt have been negotiated at arm's length, and the Postpetition Debt is being extended in good faith, as that term is used in Code § 364(e).

J. The terms and conditions of the Postpetition Documents are fair and reasonable, the best available to Debtors under the circumstances, reflect Debtors' exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and consideration.

K. Under the circumstances of these Cases, this Order is a fair and reasonable response to Debtors' request for Agents' and Lenders' consent to the use of Cash Collateral and the provision of Postpetition Debt, and the entry of this Order is in the best interest of Debtors' estates and their creditors.

L. The notice provided by Debtors of the Motion, the hearing on the Motion, and the entry of this Order satisfy the requirements of Fed. R. Bankr. P. 2002, 4001(b) and (c), and 9014, and Code §§ 102(1), 363, and 364(c) and (d), and were otherwise sufficient and appropriate under the circumstances.

**WHEREFORE, IT IS HEREBY ORDERED THAT THE MOTION IS GRANTED, AND THAT:**

1. Authorization to Use Cash Collateral. Debtors are authorized to use Cash Collateral through the Termination Date solely in accordance with the terms of this Order.

2. Procedure for Debtors' Use of Cash Collateral.

(a) Remittance of All Cash Collateral to Postpetition Agent. Debtors must deposit all Cash Collateral now or hereafter in their possession or control into the Blocked Account (or otherwise remit such Cash Collateral to Postpetition Agent in a manner satisfactory to Postpetition Agent) promptly upon Debtors' receipt thereof for application in accordance with Paragraph 2(d) of this Order.

(b) *[Reserved.]*

(c) Cash Collateral in Any Agents' or Lenders' Possession. Agents are authorized to collect upon, convert to cash, and enforce checks, drafts, instruments, and any

other forms of payment now or hereafter coming into any Agent's or any Lender's possession or control that constitute Aggregate Collateral or proceeds thereof.

(d) Application of Cash Collateral. Except as Agents may otherwise elect in their discretion, Agents are authorized to apply all Cash Collateral now or hereafter in any Agent's or Lender's possession or control as follows: (1) first, to the payment of Prepetition Debt consisting of Allowable 506(b) Amounts, until Paid in Full; (2) second, to the payment of Prepetition Debt consisting of Prepetition Revolving Credit Obligations in accordance with the terms of the Prepetition Documents, until Paid in Full; (3) third, to the payment of all other Prepetition Debt other than the Specified Prepetition Debt in accordance with the terms of the Prepetition Documents, until Paid in Full; (4) fourth, to the payment of Postpetition Debt consisting of Postpetition Charges, until Paid in Full; (5) fifth, to the payment of all other Postpetition Debt in accordance with the terms of the Postpetition Documents, until Paid in Full; and (6) sixth, to the payment of Prepetition Debt consisting of the Specified Prepetition Debt, until Paid in Full. All such applications to Postpetition Debt shall be final and not subject to challenge by any Person, including, without limitation, any Debtor, the Committee, any Trustee, or Cyprum. All such applications to Prepetition Debt shall be final, subject only to the right of parties in interest to seek a determination in accordance with Paragraph 8 below that any such application resulted in the payment of a claim that was not an allowed secured claim of Prepetition Agent and Prepetition Lenders. Any amounts that are determined by the Court as a result of any such objection or determination to have been improperly applied to the Prepetition Debt will be first applied to pay Postpetition Debt consisting of Postpetition Charges and then to all other Postpetition Debt, dollar-for-dollar, until Paid in Full.

(e) Prohibition Against Use of Cash Collateral. Unless otherwise consented to by Agents in writing, in Agents' discretion, Debtors may not use, seek to use, or be permitted to use any Cash Collateral for any purpose until the Aggregate Debt is Paid in Full; provided, however, that Debtors may use Cash Collateral solely as provided for in this Order.

3. Authorization To Incur Postpetition Debt.

(a) Postpetition Documents. Debtors are authorized and have agreed to (1) execute the Postpetition Documents, including, without limitation, all documents that Postpetition Agent and Postpetition Lenders find reasonably necessary to implement the

transactions contemplated by the Postpetition Documents, and (2) perform their obligations under, and comply with, all of the terms and provisions of the Postpetition Documents and this Order. Upon execution and delivery thereof, the Postpetition Documents will constitute valid and binding obligations of Debtors enforceable in accordance with their terms. To the extent that there exists any conflict among the terms of the Motion, the Postpetition Documents, and this Order, this Order will govern and control.

(b) Permitted Uses of Postpetition Debt. Debtors are authorized and have agreed to incur Postpetition Debt solely: (1) in accordance with the terms and provisions of this Order; (2) to the extent required to pay those expenses enumerated in the Budget, including, without limitation, the Carveout, as and when such expenses become due and payable, subject to the Permitted Variance and the terms of the Postpetition Documents; (3) to pay Allowable 506(b) Amounts and Postpetition Charges; and (4) as expressly permitted pursuant to the Postpetition Documents. If Postpetition Lenders advance monies to Debtors and Debtors use any such monies other than in accordance with the terms and provisions of this Order, then such advances will be considered to be Postpetition Debt for purposes of this Order.

(c) Refinancing of Certain Outstanding Prepetition Debt Upon Entry of Final Order. Effective upon entry of the Final Order, Debtors are authorized and have agreed to incur Postpetition Debt under the Postpetition Loan Agreement to refinance, in full, an aggregate amount of the Prepetition Debt equal to the amount of (i) all of the Prepetition Debt outstanding as of the date of calculation minus (ii) the amount of the Specified Prepetition Debt. Such refinancing of such portion of the Prepetition Debt upon entry of the Final Order will be final, subject only to the right of parties in interest to seek a determination in accordance with Paragraph 8 of this Order that such payment resulted in the payment of a claim that was not an allowed secured claim of Prepetition Agent and Prepetition Lenders. Any amounts that are disgorged in connection with any such objection or determination will be first applied to pay Postpetition Debt consisting of Postpetition Charges and then to all other Postpetition Debt in accordance with Paragraph 2(d) of this Order, dollar-for-dollar, until Paid in Full.

(d) Certain Additional Material Terms of Postpetition Debt.

(i) Maximum Amount. The maximum principal amount of Postpetition Debt outstanding may not at any time exceed the

DIP Commitment, subject to the terms and conditions of the Postpetition Loan Agreement.

(ii) Interest. (A) "Revolving Credit Loans" (as defined in the Postpetition Loan Agreement) will bear interest at a per annum rate equal to the Base Rate (as defined in the Postpetition Loan Agreement) plus 4.75% (exclusive of any default rate interest that may be imposed under the Postpetition Loan Agreement) and (B) "Term Loans" (as defined in the Postpetition Loan Agreement) will bear interest at a per annum rate equal to the Base Rate (as defined in the Postpetition Loan Agreement) plus 7.75% (exclusive of any default rate interest that may be imposed under the Postpetition Loan Agreement).

(iii) Contingent Obligations. Upon the entry of the Final Order, all of the Prepetition Debt consisting of contingent Prepetition Debt in respect of "Letters of Credit" will be deemed to be assumed by the Debtors and reissued by the Debtors under the Postpetition Documents as Postpetition Debt. All of the Assumed Prepetition Secured Obligations will be deemed to be assumed by Debtors and incurred under the Postpetition Documents as Postpetition Debt.

(iv) Closing Fee. \$750,000 for the ratable benefit of the Postpetition Lenders, all of which shall be fully earned on the date hereof, with \$250,000 due and payable on the date hereof and \$500,000 due and payable upon entry of the Final Order.

(v) Maturity. The Postpetition Debt will mature and be due and payable in full by Debtors on the Termination Date.

(vi) Prepetition Documents. Each Subordination Agreement, Prepetition Third Party Document, and other Prepetition Document will remain in full force and effect notwithstanding the entry of this Order and any subsequent orders amending this Order or otherwise providing for the use of any Cash Collateral consented to by Agents and Lenders pursuant to Code § 363 or additional financing by Agents and Lenders pursuant to Code § 364. Each "Borrower" and "Guarantor" (as each such term is defined in the Credit Agreement) is and will remain liable for all guaranteed obligations and indebtedness under the Prepetition Documents.

(vii) Joint and Several Liability of Debtors. The obligations of each Debtor under this Order are joint and several.

(viii) Deposit Account Control Agreements. All deposit account control agreements, including, without limitation, the Control Agreements, in effect as of the Filing Date will remain in full force and effect notwithstanding the entry of this Order and any subsequent orders amending this Order.



(e) Superpriority Administrative Expense Status; Postpetition Liens.

The Postpetition Debt is hereby granted superpriority administrative expense status under Code § 364(c)(1), with priority over all costs and expenses of administration of the Cases that are incurred under any provision of the Code other than the Carveout. In addition, Postpetition Agent is hereby granted the Postpetition Liens, for the benefit of itself, the Postpetition Lenders, and the other Postpetition Secured Parties, to secure the Postpetition Debt. The Postpetition Liens: (1) are in addition to the Prepetition Liens; (2) under Code §§ 364(c)(2), 364(c)(3), and 364(d), are Priority Liens (subject only to Permitted Priority Liens) without any further action by Debtors or Postpetition Agent, and without the execution, delivery, filing, or recordation of any financing statements, security agreements, control agreements, title notations, mortgages, or other documents or instruments; (3) will not be subject to any security interest or lien that is avoided and preserved under Code § 551; (4) will remain in full force and effect notwithstanding any subsequent conversion or dismissal of any Case; (5) will not be subject to Code § 510(c); and (6) upon entry of the Final Order, will not be subject to any landlord's lien, banker's lien, bailee's rights, carrier's lien, right of distraint or levy, security interest, right of setoff, or any other lien, right, or interest that any bailee, warehousemen, bank, processor, shipper, carrier, or landlord may have in any or all of the Aggregate Collateral. Without limiting the foregoing, Debtors must deliver to Postpetition Agent any such financing statements, security agreements, control agreements, mortgages, title notations, and other documents and instruments as Postpetition Agent may reasonably request from time to time in its discretion. Further, Prepetition Agent will serve as agent for Postpetition Agent for purposes of perfecting Postpetition Agent's security interest in any Postpetition Collateral that may require perfection by possession, control, or title notation, including, without limitation, under the Control Agreements. In addition, all Prepetition Third Party Documents will be deemed to be for the benefit of Postpetition Agent and the Postpetition Secured Parties without any further order of Court or action by any Person. Without limiting the foregoing, Postpetition Agent, for itself and the Postpetition Secured Parties, has, and will be deemed to have, a perfected Postpetition Lien on all existing deposit accounts of each Debtor and any new deposit account that any Debtor may establish on or after the date hereof without any further action by Debtors or Postpetition Agent.

(f) Prohibition Against Additional Debt. Debtors may not incur or seek to incur debt secured by a lien which is equal to, or superior to, the Prepetition Liens or the

Postpetition Liens, or which is given superpriority administrative expense status under Code § 364(c)(1), unless, in addition to the satisfaction of all requirements of Code § 364: (1) Agents have consented to such order; (2) at the time such an order is entered, there is no Postpetition Debt outstanding, and no obligation of Postpetition Lenders to extend Postpetition Debt; or (3) such credit or debt is first used to, and is sufficient to, cause the Aggregate Debt to be Paid in Full .

4. Adequate Protection of Interests of Prepetition Agent and Prepetition Secured Parties in the Prepetition Collateral and the Prepetition Liens. Prepetition Agent and Prepetition Secured Parties have consented to the terms of this Order and are entitled to adequate protection as set forth herein and to the extent required under Code §§ 361, 362, 363, or 364 for any decrease in the value of such interests in the Prepetition Collateral from and after the Filing Date on account of the stay, use, sale, lease, license, grant, or other disposition of any Prepetition Collateral.

(a) Interest Payments to Prepetition Lenders. Debtors will timely make monthly payments of interest and letter of credit commissions to the Prepetition Lenders at the non-default rate as provided for in, and in accordance with, the Credit Agreement commencing on the first scheduled payment date occurring after the Filing Date, whether or not included in the Budget.

(b) Priority of Prepetition Liens; Allowance of Prepetition Agent's and the Prepetition Secured Parties' Claim. Subject to the terms of Paragraph 8 of this Order: (1) the Prepetition Liens constitute Priority Liens, subject only to the Postpetition Liens and Permitted Priority Liens; (2) the Prepetition Debt constitutes the legal, valid, and binding obligation of each Debtor, enforceable in accordance with the terms of the Prepetition Documents; (3) no offsets, defenses, or counterclaims to the Prepetition Debt exist, and no portion of the Prepetition Debt is subject to avoidance, recharacterization or subordination pursuant to the Code or applicable non-bankruptcy law; and (4) Prepetition Agent's and Prepetition Secured Parties' claim with respect to the Prepetition Debt is for all purposes an allowed claim within the meaning of Code § 506, exclusive of accrued and accruing Allowable 506(b) Amounts.

(c) Replacement Liens. Prepetition Agent is hereby granted the Replacement Liens, for the benefit of itself and the Prepetition Secured Parties, as security for

the complete payment and performance of the Prepetition Debt. The Replacement Liens: (1) are in addition to the Prepetition Liens; (2) are properly perfected, valid, and enforceable liens without any other or further action by Debtors or Prepetition Agent, and without the execution, filing, or recordation of any financing statement, security agreement, control agreement, mortgage, title notation, or other document or instrument; and (3) will remain in full force and effect notwithstanding any subsequent conversion or dismissal of any Case. Without limiting the foregoing, Debtors are authorized to, and must, execute and deliver to Prepetition Agent any such financing statements, security agreements, control agreements, mortgages, title notations and other documents and instruments as Prepetition Agent may request from time to time in its discretion in respect of the Replacement Liens.

(d) Allowed Code § 507(b) Claim. If and to the extent the adequate protection of the interests of Prepetition Agent and the other Prepetition Secured Parties in the Prepetition Collateral granted pursuant to this Order proves insufficient, Prepetition Agent and the other Prepetition Secured Parties will have an allowed claim under Code § 507(b), subject and subordinate to the Carveout, in the amount of any such insufficiency, with priority over (1) any and all costs and expenses of administration of the Cases (other than the claims of Postpetition Agent, Postpetition Lenders, and the other Postpetition Secured Parties under Code § 364) that are incurred under any provision of the Code and (2) the claims of any other party in interest under Code § 507(b).

(e) Cash Consideration. As further adequate protection of the interests of Prepetition Agent and the other Prepetition Secured Parties in the Prepetition Collateral, unless Prepetition Agent may otherwise subsequently agree in writing in its discretion, any sale or other disposition of all or any portion of the Aggregate Collateral outside of the ordinary course of Debtors' businesses must be for cash consideration until the Aggregate Debt has been Paid in Full pursuant to the Prepetition Documents and the Postpetition Documents.

5. Termination Date; Rights and Remedies.

(a) Effect of Termination Date. Unless extended by the Court upon the written agreement of Postpetition Agent, upon the Termination Date without further notice or order of Court: (1) Debtors' authorization to use Cash Collateral and to incur Postpetition Debt hereunder will automatically terminate; and (2) at Postpetition Agent's election (i) the Postpetition

Debt will be immediately due and payable in full in cash, (ii) Debtors will be prohibited from using any Cash Collateral for any purpose other than for application to the Aggregate Debt in accordance with Paragraph 2(d) of this Order, and (iii) Agents will be entitled to setoff any and all Cash Collateral in the possession or control of any Agent or any Lender and apply such Cash Collateral to the Aggregate Debt in accordance with Paragraph 2(d) of this Order.

(b) Rights and Remedies. On the fifth (5th) business day after the Termination Date, at Postpetition Agent's election without notice or further order of the Court: (1) Agents will have automatic and immediate relief from the automatic stay with respect to the Aggregate Collateral (without regard to the passage of time provided for in Fed. R. Bankr. P. 4001(a)(3)), and will be entitled to exercise all rights and remedies available to them under the Prepetition Documents, the Postpetition Documents, and applicable non-bankruptcy law; and (2) Debtors must surrender the Aggregate Collateral promptly upon written demand by any Agent and will not interfere in any manner with Agents and Lenders in the exercise of their rights and remedies under the Prepetition Documents, the Postpetition Documents, and applicable non-bankruptcy law, including, without limitation, by filing a motion to retain one or more agents to sell, lease, or otherwise dispose of the Aggregate Collateral upon the request of, and subject to terms and conditions acceptable to, Agents. Notwithstanding the foregoing, during the five (5) business day period following the Termination Date, Debtors, any Committee, and the United States Trustee may seek an order of this Court determining that an Event of Default alleged to have given rise to the Termination Date did not occur; provided, however, that during such five (5) business day period, Postpetition Lenders will have no obligation whatsoever to advance any Postpetition Debt to Debtors.

(c) Access to Aggregate Collateral. Upon the entry of the Final Order, notwithstanding anything to the contrary herein or in any Prepetition Third Party Document or Postpetition Document, upon written notice to the landlord of any of the Debtors' leased premises that an Event of Default has occurred and is continuing, Agents may elect to (but will not be obligated to) enter upon any such leased premises for the purpose of exercising any right or remedy with respect to the Aggregate Collateral located thereon and will be entitled to such Debtor's rights and privileges under such lease without any interference from such landlord; provided, however, that such Agent shall pay to such landlord rent first accruing after the date on which such Agent commences occupancy of the leased premises, calculated on a per diem basis

at the non-default rate of rent, solely for the period during which Agent actually occupies such leased premises.

6. Carveout.

(a) Carveout Terms. The Carveout with respect to each Carveout Professional: (1) equals an aggregate amount not to exceed the lesser of (i) the aggregate amount provided in the applicable line item in the Budget for such Carveout Professional for the period commencing on the Filing Date and ending on the Termination Date; provided that any such Carveout Professional may utilize any unused budget amount from an applicable week for an overage in another week in the Budget during the period from the Filing Date until the Termination Date so long as the aggregate amount for such Carveout Professional does not exceed the aggregate line item in the Budget for such Carveout Professional for the period commencing on the Filing Date and ending on the Termination Date (subject to the proviso for Neal, Gerber & Eisenberg LLP and Morris, Nichols, Arsht & Tunnell LLP, CR3 Partners, LLC, and Keystone Consulting Group, LLC in paragraph 6(c) below), and (ii) the aggregate amount of allowed fees and expenses that accrue during the period commencing on the Filing Date and ending on the Termination Date; (2) will be reduced dollar-for-dollar by any payments of fees and expenses to such Carveout Professional; and (3) includes any Specified Retainer held by such Carveout Professional; provided, that, with respect to the foregoing sub-section (3), each Carveout Professional holding a Specified Retainer may elect to maintain its Specified Retainer until the occurrence of the Termination Date in order to pay any allowed but unpaid Carveout amounts owing to such Carveout Professional as of the Termination Date, in each case, subject to the terms and conditions of this Order. Subject to the last sentence of this Paragraph 6(a), upon the Termination Date, the Postpetition Lenders will provide Postpetition Debt to Debtors, to be used by Debtors for the sole purpose of funding Carveout Professionals for fees and expenses first incurred after the Termination Date, in the aggregate amount of \$50,000 (minus the amount of any remaining Specified Retainers, net of any professional fees and expenses accrued and unpaid as of the Termination Date). Postpetition Agent and Postpetition Lenders have, and will retain, the continuing right from time to time, in their discretion, to reserve against the DIP Commitment and availability in respect of all of the Carveout obligations from time to time, including, without limitation, by establishing one or more "Reserves" (as such term is defined in the Postpetition Loan Agreement) under the Postpetition Loan Agreement. Except as set forth in

this paragraph, Postpetition Agent and Postpetition Lenders will not have any obligation to fund any fees, costs, expenses, or any other amounts of any Carveout Professional accrued at any time on, prior to, or after the Termination Date. After the occurrence of the Termination Date, any surplus portion of any prepetition or postpetition retainers of any Carveout Professional (including any Specified Retainer) that may remain after the payment of all allowed Carveout amounts payable to such Carveout Professional under the Carveout shall be returned to the Agents within three (3) business days after the date on which all such allowed Carveout amounts were first paid in full for application in accordance with Paragraph 2(d) of this Order. Nothing contained herein constitutes, or may be construed to be, consent by any Person to the allowance of any fees, costs, expenses, or other amount of any Carveout Professional, and shall not affect the rights of Debtors, Agents, Lenders, any Committee, the United States Trustee, or any other party in interest to object to the allowance or payment of any amounts incurred or requested. For the avoidance of doubt, Lincoln is a Carveout Professional for purposes of the Carveout, the Carveout constitutes a Permitted Priority Lien and the Carveout for Lincoln is subject to the terms and conditions of the Lincoln Engagement Agreement, the Lincoln Consent and Acknowledgment, and this Order to the extent approved by the Court and except as otherwise agreed to in writing by Agents and Lincoln.

(b) Carveout Usage. No portion of the Carveout and no Postpetition Debt or Aggregate Collateral may be used to pay any fees or expenses incurred by any Person, including any Debtor, any Committee, or any Carveout Professional, in connection with claims or causes of action adverse (or which claim an interest adverse) to any Agent, any Lender, any other Secured Party, or any of their respective rights or interests in the Aggregate Collateral, the Postpetition Documents, or the Prepetition Documents, including, without limitation, (1) preventing, hindering, or delaying any Agent's or any other Secured Party's enforcement or realization upon any of the Aggregate Collateral or the exercise of their rights and remedies under this Order, any Postpetition Document, any Prepetition Document, or applicable law, in each case, once an Event of Default has occurred, (2) using or seeking to use any Cash Collateral or incurring indebtedness in violation of the terms hereof, or selling any Aggregate Collateral without Agents' and Lenders' written consent, or (3) objecting to, or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any Aggregate Debt, any Prepetition Document, any Postpetition Document, or any mortgages,

liens, or security interests with respect thereto or any other rights or interests of any Agent or any other Secured Party, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Code, against any Agent or any other Secured Party; provided, however, that the foregoing shall not apply to costs and expenses, in an aggregate amount not to exceed \$25,000, incurred by all of the Committee's Carveout Professionals in connection with the investigation of a potential Challenge in accordance with Paragraph 8 of this Order; provided, further, however, that the Carveout may be used to pay fees and expenses incurred by the Carveout Professionals in connection with the negotiation, preparation, and entry of this Order or any amendment hereto consented to by Postpetition Agent.

(c) Carveout Procedure. Debtors must, upon request of Postpetition Agent, provide to Postpetition Agent a written report ("Carveout Report"), in which Debtors disclose their then current estimate of (1) the aggregate amount of unpaid professional fees, costs, and expenses accrued or incurred by the Carveout Professionals through the date of the Carveout Report, and (2) the projected fees, costs, and expenses of the Carveout Professionals for the thirty (30) day period following the date of such Carveout Report. Nothing herein may be construed as consent by Agents or Lenders to the allowance of any fees, costs, or expenses of the Carveout Professionals or will affect the right of Agents or any Lender to object to the allowance and payment of any such fees, costs, or expenses, or the right of Agents or any Lender to the return of any portion of the Carveout that is funded with respect to fees, costs, and expenses for a Carveout Professional that are approved on an interim basis, but that are later denied on a final basis. No Carveout Professional will be entitled to any portion of the Carveout allocated for any other Carveout Professional in the Budget; provided, however, that (x) Neal, Gerber & Eisenberg LLP, as counsel for Debtors, and Morris, Nichols, Arsht & Tunnell LLP, as local counsel for Debtors, may share in each other's portion of the Carveout as set forth in the Budget, and (y) CR3 Partners, LLC, as the Debtors' chief restructuring officer, and Keystone Consulting Group, LLC, as providers of management services for Debtors, may also share in each other's portion of the Carveout as set forth in the Budget. Nothing contained in this Order shall in any way limit or impair the ability of any Carveout Professional to assert or defend its fees and expenses or to seek allowance and payment of any fees and expenses of such Carveout Professional that may be in excess of, and therefore not included in, the Carveout, subject to the terms and conditions of this Order.

7. No Surcharge. Debtors represent that the Budget contains a good faith estimate of all of the expenses that are reasonable and necessary for the operation of Debtors' businesses and the preservation of the Aggregate Collateral through the period for which the Budget runs, and therefore includes any and all items potentially chargeable to Agents and Lenders under Code § 506(c). Therefore, in the exercise of their business judgment, subject to entry of the Final Order, Debtors (or any Trustee) agree that there will be no surcharge of the Aggregate Collateral for any purpose unless agreed to in writing by Agents and Lenders, and effective upon entry of the Final Order, each Debtor (or any Trustee), on behalf of its estate, will be deemed to have waived any and all rights, benefits, or causes of action under Code § 506(c), the enhancement of collateral provisions of Code § 552, and under any other legal or equitable doctrine (including, without limitation, unjust enrichment) as they may relate to, or be asserted against, any Agent, any Lender, or any of the Aggregate Collateral. In reliance on the foregoing, Agents and Lenders have agreed to the entry of this Order.

8. Reservation of Rights; Bar of Challenges and Claims. The stipulations and representations contained in this Order, including, without limitation, in Paragraph D, will be binding on all Challenge Parties and all other parties-in-interest, unless, and solely to the extent that, (i) a Challenge Party timely and properly commences a Challenge during the Investigation Period and (ii) the Court rules in favor of the plaintiff in any such timely and properly filed Challenge, in which case all of the stipulations and representations contained in this Order will be binding on all such Persons other than the specific stipulations or representations that were the subject of any such successful Challenge.

(a) Challenge Procedure. During the Investigation Period, a Challenge Party will be entitled to determine whether a basis to assert a Challenge exists. If a Challenge Party identifies a basis to assert a Challenge, then it must notify Debtors and Prepetition Agent in writing during the Investigation Period of its demand that Debtors initiate a contested matter or an adversary proceeding in these Cases in respect of such Challenge. From the date that Debtors and Prepetition Agent receive such written notice, Debtors will then have five (5) days to notify the Challenge Party of whether Debtors intends to initiate any such action and ten (10) days to initiate any such action. If Debtors notify such Challenge Party that Debtors do not intend to initiate a contested matter or an adversary proceeding, then such Challenge Party will have ten (10) days from the receipt of such notice to file a motion with the Court for leave to initiate a



contested matter or an adversary proceeding in respect of such Challenge. Nothing herein grants standing in favor of any Challenge Party absent further order of this Court. Debtors, if timely notified of a potential Challenge, will retain authority to prosecute, settle, or compromise any such Challenge in the exercise of its business judgment and subject to any applicable further order of Court.

(b) Bar of Challenges and Claims. If Debtors and Prepetition Agent do not receive written notice of a potential Challenge during the Investigation Period (or such later date as agreed to in writing by Prepetition Agent and Prepetition Lenders, in their discretion, or for cause shown by an order of this Court), or a timely-asserted Challenge is not successful, then without further order of the Court, (1) the claims, liens, and security interests of Prepetition Agent, the Prepetition Lenders and the other Prepetition Secured Parties will and will be deemed to be allowed for all purposes in the Cases and will not be subject to any challenge whatsoever by any party in interest, including, without limitation, as to validity, extent, amount, perfection, priority, enforceability, or otherwise, and (2) Debtors and their respective estates will be deemed to have absolutely, unconditionally, and irrevocably waived, released, and discharged Prepetition Agent, each Prepetition Lender, each other Prepetition Secured Party, and each of their respective successors and assigns, and each of their respective present and former shareholders, members, managers, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, advisors, principals, employees, consultants, agents, legal representatives, and other representatives of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every kind, nature, and description whatsoever, that may have occurred on or prior to the date of entry of this Order with respect to, or in connection with, the Prepetition Debt, the Prepetition Liens, or any of the Prepetition Documents.

9. Sale Covenants. To effectuate the sale process for all, or substantially all, of Debtors' assets, Debtors have agreed to, and are authorized to, timely satisfy each of the "Sale Covenants" set forth and defined in Section 8.21 and Schedule 8.21 of the Postpetition Loan Agreement. Debtors, Agents, and requisite Lenders may agree to amend or otherwise modify such sale covenants from time to time, in writing, without the need of any further notice, hearing, or order of this Court (other than a notice of such amendment or modification to be filed with this Court).

10. Right to Credit Bid. In connection with the sale or other disposition of all or any portion of the Aggregate Collateral, whether under Code § 363, Code § 1129 or otherwise, pursuant and subject to Code § 363(k), (a) Postpetition Agent will have the continuing right to use the amounts then outstanding under the Postpetition Debt, or any part thereof, to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Aggregate Collateral and (b) subject to Paragraph 8 of this Order, Prepetition Agent will have the continuing right to use the amounts then outstanding under the Prepetition Debt, or any part thereof, to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Aggregate Collateral. With respect to any such sale or other disposition of all or any portion of the Aggregate Collateral, and any auction and sale process relating thereto, each Agent (and its respective designees) is, and will be deemed to be, a qualified bidder for all purposes under any sale and bidding procedures, and any order approving any bidding and sale procedures, and may attend and participate at any auction and any sale hearing, in each case, without regard to any of the requirements or conditions set forth therein and without any other or further action by such Agent or designee.

11. Plan. Unless Agents subsequently consent in writing, Debtors will not seek entry of an order confirming any plan in any Case unless the Aggregate Debt shall be Paid in Full on the earlier of (a) the effective date of such plan or (b) the Termination Date, notwithstanding anything to the contrary in any such order confirming a plan.

12. Application of Sale Proceeds. All proceeds from any sales or any other dispositions of all or any portion of the Aggregate Collateral not in the ordinary course of Debtors' businesses will be remitted to Agents for application to the Aggregate Debt, subject to Paragraph 2(d) of this Order.

13. Waiver of Right to Return/Consent to Setoff. Without the prior written consent of Agents and Lenders, Debtors will not agree or consent to any of the following: (a) to return any Aggregate Collateral pursuant to Code § 546(h); (b) to consent to any order permitting or allowing any claims pursuant to Code § 503(b)(9); or (c) to consent to setoff pursuant to Code § 553.

14. Tax Obligations. Debtors will timely pay or remit, as applicable, all sales tax, payroll tax, and trust fund tax obligations under applicable law from time to time that are set forth in the Budget.

15. Indemnification. Debtors will indemnify and hold harmless Prepetition Agent and Prepetition Lenders, and Postpetition Agent and Postpetition Lenders, in accordance with the terms of the Prepetition Documents and the Postpetition Documents, respectively.

16. No Marshaling. None of the Agents, Lenders, or any of the Aggregate Collateral will be subject to the doctrine of marshaling.

17. Postpetition Charges. All Postpetition Charges must be promptly paid by Debtors in accordance with this Order and the Postpetition Documents, without need for filing any application with the Court for approval or payment thereof, within ten (10) business days of Postpetition Agent's written notice to Debtors, any Committee, and the United States Trustee.

18. Force and Effect of Prepetition Documents; Subordination Agreements. Except as modified herein, and subject to the other provisions of this Order (including Paragraph 8 hereof) and the Code, the Prepetition Documents and the Prepetition Third Party Documents will remain in full force and effect with respect to the Prepetition Debt. To the extent that there exists any conflict among the terms of the Motion, the Prepetition Documents, the Prepetition Third Party Documents, and this Order, this Order governs and controls. Without limiting the foregoing, the Cyprium Subordination and Intercreditor Agreement and each other Subordination Agreement (a) is and will remain valid and binding on each of the parties thereto notwithstanding the entry of this Order, (b) constitutes a "subordination agreement" within the meaning of Code § 510, and (c) is fully enforceable in accordance with its terms and provisions. The consent by any Agent or Lender to entry of this Order will not prejudice any rights of any Agent or Lender under the Cyprium Subordination and Intercreditor Agreement or any other Subordination Agreement.

19. Modification of Stay. The automatic stay of Code § 362 is hereby modified with respect to Agents and Lenders to the extent necessary to effectuate the provisions of this Order, including, without limitation, after the Termination Date to permit Agents and Lenders to exercise their respective rights contemplated by Paragraph 5 above.

20. No Waiver. None of the Agents, the Lenders, or the other Secured Parties will be deemed to have suspended or waived any of their rights or remedies under this Order, the Prepetition Documents, the Postpetition Documents, the Code, or applicable non-bankruptcy law unless such suspension or waiver is hereafter made in writing, signed by a duly authorized officer of Agents, Lenders, or such other Secured Parties, as applicable, and directed to Debtors. No failure of any Agent or any other Secured Party to require strict performance by any Debtor (or by any Trustee) of any provision of this Order will waive, affect, or diminish any right of Agents or any other Secured Party thereafter to demand strict compliance and performance therewith, and no delay on the part of Agents or any other Secured Party in the exercise of any right or remedy under this Order, the Prepetition Documents, the Postpetition Documents, the Code, or applicable non-bankruptcy law will preclude the exercise of any right or remedy. Further, this Order does not constitute a waiver by Prepetition Agent or the other Prepetition Secured Parties of any of their rights under the Prepetition Documents, the Code, or applicable non-bankruptcy law, including, without limitation, their right to later assert: (a) that any of their interests in the Aggregate Collateral lack adequate protection within the meaning of Code §§ 362(d) or 363(e) or any other provision thereof or (b) a claim under Code § 507(b).

21. "Responsible Person". By taking any actions pursuant to this Order, Postpetition Agent and Postpetition Lenders will not be deemed to be (a) in control of the operations or liquidation of any Debtor or (b) acting as a "responsible person" with respect to the operation, management, sale, or liquidation of any Debtor.

22. Release. Upon the date that the Postpetition Debt is Paid in Full and prior to the release of the Postpetition Liens, each Debtor, on behalf of its estate and itself, must execute and deliver to Postpetition Agent, Postpetition Lenders, the other Postpetition Secured Parties, and each of their respective successors and assigns, and each of their respective present and former affiliates, shareholders, subsidiaries, divisions, predecessors, members, managers, directors, officers, attorneys, employees, agents, advisors, principals, consultants, and other representatives (collectively, the "Releasees"), a general release of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every kind, nature, and description, that Debtors (or any of them) had, have, or hereafter can or may have against the Releasees (or any of them), whether known or unknown,

foreseen or unforeseen, existing or hereafter arising, in law, in equity, or otherwise, in respect of events that occurred on or prior to the date on which the Postpetition Debt is Paid in Full.

23. Amendments. Debtors, Postpetition Agent, and Postpetition Lenders may enter into amendments or modifications of the Postpetition Documents or the Budget without any further notice, hearing, or order of this Court; provided, however, that (a) such modifications or amendments do not materially and adversely affect the rights of any creditor or other party-in-interest and (b) notice of any such amendment or modification is filed with this Court and provided to any Committee and the United States Trustee.

24. Proof of Claim. Neither Prepetition Agent nor any of the other Prepetition Secured Parties is required to file a proof of claim with respect to any of the Prepetition Debt and the stipulations and findings set forth in this Order constitute an informal proof of claim in respect thereof. Notwithstanding the foregoing or any subsequent order of Court concerning any proof of claim filing requirements, Prepetition Agent is authorized (but is not obligated) to file a single master proof of claim in the case of Hobbico, Inc. on behalf of itself and the Prepetition Secured Parties on account of their claims under the Prepetition Documents and hereunder, and any such master proof of claim will be deemed to be filed as a claim against each Debtor in each Case.

25. Binding Effect. Except as provided in Paragraph 8 herein, this Order is binding on all parties in interest in the Cases and their respective successors and assigns, including, without limitation, any Trustee, except that any Trustee will have the right to terminate this Order after notice and a hearing, subject to the terms and conditions of this Order. If, in accordance with Code § 364(e), this Order does not become a final nonappealable order, if a Trustee terminates this Order, or if any of the provisions of this Order are hereafter modified, amended, vacated, or stayed by any subsequent order of this Court or any other court, such termination or subsequent order will not affect: (a) subject to Paragraph 8 of this Order, any of the agreements, stipulations, representations, or findings contained in this Order, or any of the relief granted by, or any of the releases contained in, this Order; and (b) the validity, extent, amount, perfection, priority, enforceability, or effectiveness of any lien, security interest, or other benefit or claim authorized hereby with respect to Cash Collateral remitted (subject to Paragraph 8 of this Order), or Postpetition Debt incurred, prior to the effective date of such termination or

subsequent order. All such liens, security interests, claims, and other benefits will be governed in all respects by the original provisions of this Order, and Postpetition Agent, Postpetition Lenders, and the other Postpetition Secured Parties will be entitled to all of the rights, remedies, privileges, and benefits granted herein, including, without limitation, the liens and priorities granted herein with respect to the Postpetition Debt. Except as otherwise explicitly set forth in this Order, no third party is intended to be, or may be deemed to be, a third party beneficiary of this Order.

26. Survival. The provisions of this Order, and any actions taken pursuant to or in reliance upon the terms hereof, including the Carveout, subject to the terms of Paragraph 6 hereof, will survive entry of, and govern in the event of any conflict with, any order that may be entered in the Cases: (a) confirming any chapter 11 plan, (b) converting any Case to a case under chapter 7 of the Code, (c) dismissing any Case, (d) after the occurrence of the Termination Date or an Event of Default, (e) withdrawing of the reference of any Case from this Court, or (e) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Order, including, without limitation, the rights granted to Postpetition Agent, Postpetition Lenders, and the other Postpetition Secured Parties under Code §§ 364(c) and (d), will continue in full force and effect until all of the Aggregate Debt is Paid in Full.

27. Notice of Final Hearing. The Final Hearing is scheduled for \_\_\_\_\_, at \_\_\_\_:\_\_\_\_.m., and may be continued from time to time without further notice other than that given in open court. Debtors are directed to immediately serve a copy of this Order by first class mail, postage prepaid, on counsel for Agents, any Persons that have asserted a lien or other interest in any of Debtors' assets, Debtors' thirty (30) largest unsecured creditors, all taxing authorities that have, or whom the Debtors believe may, assert claims against the Debtors or any of the Debtors' assets, and the United States Trustee, which service will constitute adequate and proper notice of the Final Hearing. Any objection to

the Order must be filed with the Court so as to be received by counsel for the Debtors, Agents, and the United States Trustee by \_\_\_\_\_, at 4:00 p.m. (Eastern Time).

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT A**

**DEFINED TERMS**

1. ***Aggregate Collateral.*** Collectively, the Prepetition Collateral and the Postpetition Collateral.
2. ***Aggregate Debt.*** Collectively, the Prepetition Debt and the Postpetition Debt.
3. ***Allowable 506(b) Amounts.*** To the extent allowable under Code § 506(b), interest at the default rate of interest as set forth in Section 5.1(b) of the Credit Agreement, all fees, costs, expenses, and other charges due or coming due under the Prepetition Documents or in connection with the Prepetition Debt (regardless of whether such interest, fees, costs, expenses, and other charges are included in the Budget), and all costs and expenses at any time incurred by Prepetition Agent and Prepetition Lenders in connection with: (a) the negotiation, preparation, and submission of this Order and any other order or document related hereto, and (b) the representation of Prepetition Agents and Prepetition Lenders in the Cases, including, without limitation, in defending any Challenge.
4. ***Assumed Prepetition Secured Obligations.*** The "Assumed Prepetition Secured Obligations" (as such term is defined in the Postpetition Loan Agreement).
5. ***Blocked Account.*** Deposit account number ending –5253 maintained by Hobbico at Wells Fargo Bank, National Association or such other deposit account that Agents may subsequently agree to in writing.
6. ***Budget.*** The "Variance Budget" (as such term is defined in the Postpetition Loan Agreement) attached to this Order as Exhibit B, as amended, supplemented, or otherwise modified from time to time in accordance with the Postpetition Loan Agreement.
7. ***Carveout.*** Collectively, (a) all fees required to be paid to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), (b) with respect to each Carveout Professional, the allowed fees and disbursements of such Carveout Professional from time to time pursuant to Code § 330, in accordance with the terms and conditions of Paragraph 6 of this Order and (c) the amount of Specified Retainers provided by the Debtors and at any time held by Carveout Professionals. For the avoidance of doubt, the maximum amount of the Carveout and the permitted use and restrictions regarding the use of the Carveout apply with like effect to Cash Collateral, proceeds of the Postpetition Debt and all retainers, including Specified Retainers.
8. ***Carveout Professionals.*** Collectively, (a) Neal, Gerber & Eisenberg LLP, as counsel for Debtors, (b) Morris, Nichols, Arsht & Tunnell LLP, as local counsel for Debtors, (c) Tom O'Donoghue of CR3 Partners LLC, as chief restructuring officer of Debtors, and such other personnel of CR3 Partners LLC that will assist Mr. O'Donoghue during these Cases, (d) Lincoln, (d) Keystone Consulting Group, LLC, as Debtors' financial consultant, (e) JND Corporate Restructuring, as claims and noticing agent in these Cases, (f) such accounting firm that is authorized by the Court to be retained by Debtors to generate any quality of earnings report in connection with the "Sale" (as defined in the Postpetition Loan Agreement), (g) such



professionals that are authorized by the Court to be retained by any Committee, and (h) the United States Trustee.

9. **Cases.** Collectively, the chapter 11 cases or any superseding chapter 7 cases of Debtors.

10. **Cash Collateral.** All "cash collateral", as that term is defined in Code § 363(a), in which Agents (on behalf of the Secured Parties) have an interest, all deposits subject to setoff rights in favor of any Agent or other Secured Party, and all cash arising from the collection or other conversion to cash of all or any portion of the Aggregate Collateral, including, without limitation, from the sale or other disposition of any inventory and the collection of any accounts receivable of any Debtor.

11. **Challenge.** A claim or cause of action challenging the extent, validity, perfection, amount, priority, or enforceability of the Prepetition Debt, the Prepetition Liens, or any other claims or causes of action against Prepetition Agent, Prepetition Lenders, or any other Prepetition Secured Party, which Debtors, the Committee, or another party-in-interest may bring, in accordance with Paragraph 8 of this Order.

12. **Challenge Party.** Any Committee, any Trustee, or other party-in-interest with the requisite standing.

13. **Code.** The United States Bankruptcy Code (11 U.S.C. § 101 *et seq.*), as amended, and any successor statute. Unless otherwise indicated, all statutory section references in this Order are to the Code.

14. **Committee.** Any official creditors' committee appointed to represent unsecured creditors in the Cases pursuant to Code § 1102.

15. **Control Agreements.** Collectively, (a) that certain Deposit Account Control Agreement (Access Restricted After Notice) dated as of February 7, 2017, by and among Debtors, Prepetition Agent, and Wells Fargo Bank, National Association, (b) that certain Deposit Account Control Agreement (Access Restricted Immediately) dated as of February 7, 2017, by and among Debtors, Prepetition Agent, and Wells Fargo Bank, National Association, and (c) any other deposit account control agreement or similar agreement relating to the Prepetition Debt made by or in favor of Prepetition Agent or Prepetition Lenders from time to time, in each case, as amended, supplemented, or otherwise modified from time to time.

16. **Credit Agreement.** That certain Third Amended and Restated Credit Agreement dated as of July 11, 2014, by and among Prepetition Agent, the Prepetition Lenders party thereto from time to time, and Debtors, as amended, modified, supplemented, replaced, or refinanced from time to time in accordance with the terms thereof.

17. **Cyprium.** Cyprium Investors IV AIV I LP, a Delaware limited partnership, together with any successors and assigns.

18. **Cyprium Subordination and Intercreditor Agreement.** That certain Amended and Restated Subordination and Intercreditor Agreement dated as of December 6, 2016, by and among the Debtors, the subsidiaries of the Debtors party thereto from time to time,

Prepetition Agent, and Cyprum, as amended, supplemented, or otherwise modified from time to time.

19. **DIP Commitment.** Collectively, \$45,000,000 of Revolving Credit Commitments (as defined in the Postpetition Loan Agreement) and \$26,900,000 of Initial Term Loan Commitments, as increased by all interest, fees, costs and other charges accrued and accruing with respect to the "Prepetition Term Obligations" (as defined in the Postpetition Loan Agreement) (other than adequate protection in the form of cash payments paid to the Prepetition Lenders in respect of the "Prepetition Term Loans" (as defined in the Postpetition Loan Agreement)).

20. **Event of Default.** At Postpetition Agent's election, the occurrence of any of the following: (a) the occurrence and continuance of any "Event of Default" (as defined in the Postpetition Loan Agreement) first arising after the Filing Date under the Postpetition Loan Agreement or any other Postpetition Document; (b) any Debtor fails to timely comply with the covenants or perform any of its obligations in strict accordance with the terms of this Order; (c) any Debtor fails to comply with any Sale Covenant; (d) any Debtor, without the consent of the Agents and Lenders, use, or seek the use of, Cash Collateral other than in accordance with the terms of this Order; (e) any Debtor, without the written consent of Agents and Lenders, file a motion to incur debt secured by a lien with priority equal to, or superior to, the Prepetition Liens or the Postpetition Liens or which is given superpriority administrative expense status under Code § 364(c) other than in accordance with the terms of this Order; (f) Tom O'Donoghue of CR3 Partners LLC is no longer the chief restructuring officer of Debtors for any reason (a "CRO Event") and Debtors have not selected and appointed a replacement chief restructuring officer reasonably acceptable to Postpetition Agent, on terms acceptable to Postpetition Agent, within five (5) business days after such CRO Event; (g) any Debtor files a motion to conduct a Code § 363 sale of all or any part of the Aggregate Collateral on terms unacceptable to Agents and Lenders; (h) any Debtor or other Person files a chapter 11 plan that is not acceptable to Agents and Lenders; (i) entry of any order authorizing any party in interest to reclaim any of the Aggregate Collateral, granting any party in interest relief from the automatic stay with respect to the Aggregate Collateral, or requiring that any Debtor turnover any of the Aggregate Collateral, in each case, prior to the full, final, and indefeasible repayment of all of the Aggregate Debt; (j) entry of any order requiring any Debtor to pay (prior to full, final and indefeasible repayment of all Aggregate Debt) any amounts in respect of claims under Code § 503(b)(9) or otherwise on account of goods shipped to any Debtor prior to the Filing Date; (k) any material representation or warranty made by any Debtor in any certificate, report, or financial statement delivered to any Agent or to any Lender proves to have been false or misleading in any material respect as of the time when made or given (including by omission of material information necessary to make such representation, warranty, or statement not misleading); (l) any Debtor (or any affiliate or insider of any Debtor) files a motion in any Case to dismiss any Case or to convert any Case to a case under chapter 7 of the Code; (m) any Case is dismissed or converted to a case under chapter 7 of the Code; (n) a Trustee is appointed or elected in any Case, or an examiner with the power to operate any Debtor's business is appointed in any Case; (o) commencement of any adversary proceeding or contested matter objecting to the extent, validity, amount, perfection, priority or enforceability of all or any portion of the Prepetition Debt, Prepetition Documents, or Prepetition Liens by any Debtor (or any affiliate or insider of any Debtor) or any other Person (provided, that, in the event that any Person (other than a Committee asserting a Challenge pursuant to Paragraph 8 hereof) other than a Debtor (or any affiliate or insider of any Debtor) commences

any such adversary proceeding or contested matter, Debtors do not file a responsive pleading within twenty-one (21) days after the commencement date thereof to contest the same); (p) any Debtor's exclusivity period under Code § 1121 is terminated or shortened for any reason whatsoever; (q) Lincoln ceases to be investment banker for Debtors at any time for any reason and the Debtors do not consummate a new "Qualified Investment Banker Engagement" (as defined in the Postpetition Loan Agreement) within ten (10) Business Days after the date on which Lincoln first resigns, is suspended, or has its services modified, or is terminated; (r) any payment is made by any Debtor, or any adequate protection is granted by any Debtor, with respect to any indebtedness of Debtors other than as provided in this Order or otherwise consented to in writing by Agents and approved by the Court; (s) any Debtor fails at any time to pay all accrued administrative expenses and other obligations when due in accordance with, and subject to, the Budget and the Postpetition Documents; (t) this Order is modified, amended, reversed, vacated, or stayed in any manner not consented to in writing by Agents; or (u) the Final Order is not entered within thirty (30) days following the entry of this Order in form and substance satisfactory to Agents.

21. **Filing Date.** January 10, 2018.

22. **Final Hearing.** The final hearing on the Motion conducted in accordance with Fed. R. Bankr. P. 4001.

23. **Final Order.** A final order authorizing Debtors to use Cash Collateral and incur Postpetition Debt entered at, or in connection with, the Final Hearing.

24. **Hobbico.** Hobbico, Inc., an Illinois corporation.

25. **Investigation Period.** The period from the Filing Date until the date that is the earlier of (a) seventy-five (75) days after the Filing Date or (b) sixty (60) days after the date that a Committee is formed, if any; provided, however, that if the Cases are converted to cases under chapter 7 of the Code, then any Trustee that is appointed in such cases will have the benefit of any investigation period that may be remaining under the preceding sentence.

26. **Lincoln.** Lincoln Partners Advisors LLC, as in its capacity as investment banker for Debtors.

27. **Lincoln Consent and Acknowledgment.** That certain Consent and Acknowledgment dated as of January 9, 2018, by and between Lincoln and Prepetition Agent, as acknowledged and agreed to by Hobbico.

28. **Lincoln Engagement Agreement.** That certain engagement letter agreement dated as of November 27, 2017, by and between Hobbico and Lincoln, as amended pursuant to that certain amendment letter agreement dated as of January 5, 2018, by and between Hobbico and Lincoln.

29. **Paid in Full.** With respect to the Postpetition Debt or the Prepetition Debt, as applicable, and except as otherwise agreed to in writing by the Postpetition Lenders and the Prepetition Lenders, as applicable: (a) the termination of the Postpetition Loan Agreement and the other Postpetition Documents or the Credit Agreement and the other Prepetition Documents, as applicable; (b) the indefeasible payment in full in cash of all Postpetition Debt or Prepetition

Debt, as applicable, together with all accrued and unpaid interest and fees thereon; (c) all commitments under the Postpetition Loan Agreement or commitments under the Credit Agreement, as applicable, shall have terminated or expired; (d) Postpetition Agent or Prepetition Agent, as applicable, shall have received cash collateral in such amount as the applicable "Issuing Lender" (as defined in the Postpetition Loan Agreement) or the applicable "Issuing Lender" (as defined in the Credit Agreement), as applicable, deems is reasonably necessary to secure all contingent reimbursement obligations relating to any "Letters of Credit" (as defined in the Postpetition Loan Agreement) or any "Letters of Credit" (as defined in the Credit Agreement); (e) Postpetition Agent or Prepetition Agent, as applicable, shall have received cash collateral in such amount as the applicable "Cash Management Bank" (as defined in the Postpetition Loan Agreement) or the applicable "Cash Management Bank" (as defined in the Credit Agreement), as applicable, deems is reasonably necessary to secure all obligations relating to any "Cash Management Agreements" (as defined in the Postpetition Loan Agreement) or any "Cash Management Agreements" (as defined in the Credit Agreement); (f) the indefeasible payment or repayment in full in cash of any and all other "Secured Obligations" (as defined in the Postpetition Loan Agreement) or "Secured Obligations" (as defined in the Credit Agreement), as applicable, including, without limitation, the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of any other obligation) under any "Hedge Agreement" provided by any "Hedge Bank" (as such terms are defined in the Postpetition Loan Agreement) or any "Hedge Agreement" provided by any "Hedge Bank" (as such terms are defined in the Credit Agreement); (g) all claims of the Debtors against Postpetition Agent, Postpetition Lenders and the other Postpetition Secured Parties, or of "Borrowers" and "Guarantors" (as each such term is defined in the Credit Agreement) against Prepetition Agent, Prepetition Lenders and the other Prepetition Secured Parties, as applicable, arising on or before the payment date shall have been released on terms acceptable to Postpetition Agent or Prepetition Agent, as applicable; and (h) Postpetition Agent or Prepetition Agent, as applicable, shall have received cash collateral in such amount as Postpetition Agent or Prepetition Agent, as applicable, deems is reasonably necessary to secure Postpetition Agent and the other Postpetition Secured Parties, or Prepetition Agent and the other Prepetition Secured Parties, as applicable, in respect of any asserted or threatened (in writing) claims, losses, demands, actions, suits, proceedings, investigations, liabilities, fines, fees, costs, expenses (including attorneys' fees and expenses), penalties, or damages for which any of the Postpetition Agent and the other Postpetition Secured Parties, or Prepetition Agent and the other Prepetition Secured Parties, as applicable, may be entitled to indemnification or reimbursement by any Debtor pursuant to the terms of the Postpetition Loan Agreement, the other Postpetition Documents, the Credit Agreement, or the other Prepetition Documents.

30. ***Permitted Priority Liens.*** Collectively, (a) the Carveout, and (b) liens in favor of third parties upon the Prepetition Collateral, which third-party liens, as of the Filing Date: (1) had priority under applicable law over the Prepetition Liens, (2) were not subordinated by agreement or applicable law to the Prepetition Liens, and (3) were non-avoidable, valid, properly perfected, and enforceable as of the Filing Date (or were perfected subsequent to the Filing Date pursuant to, and in accordance, the Code).

31. ***Permitted Variance.*** The permitted variance set forth in Section 9.17 of the Postpetition Loan Agreement, as the same may be amended or otherwise modified from time to time in accordance with the Postpetition Loan Agreement.

32. **Person.** Any individual, partnership, limited liability company, corporation, trust, joint venture, joint stock company, association, unincorporated organization, government or agency or political subdivision thereof, or any other entity whatsoever.

33. **Postpetition Charges.** Interest at the applicable rate of interest under the Postpetition Loan Agreement and all fees, costs, expenses, and other charges provided for in the Postpetition Loan Agreement, including, without limitation, those incurred by Postpetition Agent and the Postpetition Lenders at any time in connection with the documentation, negotiation, administration, and enforcement of the Postpetition Debt (regardless of whether any such fees, costs, expenses, interest, and other charges are included in the Budget).

34. **Postpetition Collateral.** All of the real property and personal property of the Debtors of any description whatsoever, wherever located, and whenever arising or acquired, including, without limitation, any and all accounts, books, cash (including, without limitation, all Cash Collateral, cash deposits, and all cash proceeds held in escrow), cash equivalents, chattel paper, commercial tort claims, deposits, deposit accounts, documents, equipment, fixtures, goods, general intangibles (including, without limitation, effective upon entry of the Final Order, all claims and causes of action under chapter 5 of the Code, including, without limitation, Code §§ 542, 544, 545, 547, 548, 549, 550, 551, and 553, and all proceeds thereof), instruments, intellectual property, intellectual property licenses, inventory, investment property, leasehold interests, negotiable collateral, supporting obligations and all other "Collateral" (as that term is defined in the Postpetition Loan Agreement and in the Postpetition Security Agreement), and all proceeds, rents, issues, profits, and products, whether tangible or intangible, of any and all of the foregoing, including, without limitation, any and all proceeds of insurance covering any of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts, and other computer materials and records related thereto.

35. **Postpetition Debt.** All of the indebtedness and obligations of the Debtors to Postpetition Agent, Postpetition Lenders, and the other Postpetition Secured Parties incurred on or after the Filing Date pursuant to this Order or otherwise, including, without limitation, all "Obligations" and all other "Secured Obligations" (as each such term is defined in the Postpetition Loan Agreement), and any advances made by Postpetition Agent or Postpetition Lenders to pay all or any portion of the Carveout.

36. **Postpetition Documents.** Collectively, the Postpetition Loan Agreement, all of the other "Loan Documents", all "Secured Hedge Agreements", and all "Secured Cash Management Agreements" (as each such term is defined in the Postpetition Loan Agreement), in each case, as amended, supplemented, or otherwise modified from time to time.

37. **Postpetition Liens.** Priority Liens in the Aggregate Collateral, subject only to Permitted Priority Liens.

38. **Postpetition Loan Agreement.** That certain Debtor-in-Possession Credit Agreement dated as of January \_\_\_, 2018, by and among Debtors, Postpetition Agent, and the Postpetition Lenders party thereto from time to time, as amended, modified, supplemented, replaced, or refinanced from time to time in accordance with the terms thereof.

39. **Postpetition Secured Parties.** Collectively, the "Secured Parties" (as that term is defined in the Postpetition Loan Agreement).

40. **Postpetition Security Agreement.** That certain Debtor-in-Possession Pledge and Security Agreement dated as of January \_\_\_, 2018, by and among the Debtors and Postpetition Agent, as amended, supplemented, or otherwise modified from time to time.

41. **Prepetition Collateral.** Collectively, all of the "Collateral" (as that term is defined in the Credit Agreement), including, without limitation, all of the "Collateral" (as that term is defined in the Prepetition Security Agreement), existing as of the Filing Date, and any and all proceeds, rents, issues, profits, and products thereof.

42. **Prepetition Debt.** (a) All of the indebtedness and obligations under the Prepetition Documents as of the Filing Date, including, without limitation, all "Obligations", all "Secured Obligations" in respect of "Secured Hedge Agreements" (including, without limitation, any obligations arising from, or in connection with, any termination of any Secured Hedge Agreement), all "Secured Obligations" in respect of "Secured Cash Management Agreements", and all other "Secured Obligations" (as such terms are defined in the Credit Agreement), and all fees, costs, interest, expenses, and other charges as and when due and payable pursuant to the Prepetition Documents, plus (b) all Allowable 506(b) Amounts.

43. **Prepetition Documents.** Collectively, the Credit Agreement, the other "Loan Documents", the "Secured Hedge Agreements", and the "Secured Cash Management Agreements" (as each such term is defined in the Credit Agreement), in each case, as amended, supplemented, or otherwise modified from time to time.

44. **Prepetition Liens.** Prepetition Agent's (on behalf of itself, the Prepetition Lenders, and the other Prepetition Secured Parties) asserted security interests in, and liens on, the Prepetition Collateral under the Prepetition Documents, subject only to Permitted Priority Liens.

45. **Prepetition Revolving Credit Obligations.** All Prepetition Debt owing to the Prepetition Lenders in respect of the Prepetition Lenders' Revolving Credit Commitments (as defined in the Credit Agreement) under the Credit Agreement plus Prepetition Revolving Credit Charges.

46. **Prepetition Revolving Credit Charges.** All fees, costs, expenses, interest, and other charges due or coming due in connection with the Prepetition Revolving Credit Obligations (regardless of whether any such fees, costs, interest, or other charges are included in the Budget).

47. **Prepetition Secured Parties.** Collectively, the "Secured Parties" (as that term is defined in the Credit Agreement).

48. **Prepetition Security Agreement.** That certain Third Amended and Restated Pledge and Security Agreement dated as of December 6, 2016, by and among the Debtors and Prepetition Agent, as amended, supplemented, or otherwise modified from time to time.

49. **Prepetition Third Party Documents.** Collectively, any deposit account control agreements, leases, licenses, landlord agreements, warehouse agreements, processor agreements, bailment agreements, insurance policies, contracts, or other similar agreements or documents of any Debtor, or delivered to Prepetition Agent or any Prepetition Lender, from time to time in which Prepetition Agent or any Prepetition Lender has an interest, including, without

limitation, (a) the Control Agreements, (b) that certain Landlord Consent and Waiver dated as of October 21, 2005, by and between Prepetition Agent and TAG Along Associates, L.P., an Illinois limited partnership (as successor to The Atkins Group), pertaining to the leased premises located at Bays 1-15 of the warehouse located at 3002 North Apollo Drive, Champaign, Illinois, (c) that certain Landlord Consent and Waiver dated as of October 21, 2005, by and between Prepetition Agent and TAG Along Associates, L.P., an Illinois limited partnership (as successor to Clint C. Atkins), pertaining to the leased premises located at 2901 Research Road, Champaign, Illinois, and (d) that certain Waiver of Landlord dated as of October 17, 2005, by and between Prepetition Agent and DP Industrial, LLC, a Delaware limited liability company, pertaining to the leased premises located at 1190 Trademark Drive, Reno, Nevada, in each case, as amended, supplemented, or otherwise modified from time to time.

50. **Priority Liens.** Liens which are first priority, properly perfected, valid, and enforceable security interests, which are not subject to any claims, counterclaims, defenses, setoff, recoupment, or deduction, and which are otherwise unavoidable and not subject to recharacterization or subordination pursuant to any provision of the Code, any agreement, or applicable non-bankruptcy law.

51. **Replacement Liens.** Priority Liens in the Postpetition Collateral granted to Prepetition Agent (for the benefit of itself, the Prepetition Lenders, and the other Prepetition Secured Parties) pursuant to this Order, subject only to the Postpetition Liens and the Permitted Priority Liens.

52. **Sale Covenants.** Collectively, the "Sale Covenants" set forth and defined in Section 8.21 and Schedule 8.21 of the Postpetition Loan Agreement, as the same may be amended or otherwise modified from time to time in accordance with the terms of the Postpetition Loan Agreement and this Order.

53. **Secured Parties.** Collectively, the Postpetition Secured Parties and the Prepetition Secured Parties.

54. **Specified Prepetition Debt.** The "Specified Prepetition Obligations" (as defined in the Postpetition Loan Agreement).

55. **Specified Retainers.** Collectively, the professional fee retainers held and maintained by each of Neal, Gerber & Eisenberg LLP, as counsel for Debtors, Morris, Nichols, Arsht & Tunell LLP, as local counsel for Debtors, Keystone Consulting Group, LLC, as Debtors' financial consultant, and Tom O'Donoghue of CR3 Partners LLC, as Debtors' chief restructuring officer, in each case, in an amount not to exceed the retainer amount set forth in the Budget for such Carveout Professional under the column designated as "Retainers" in the Budget; provided, that all such retainer funds shall in each case be used solely to pay the allowed Carveout amounts of such Carveout Professional under, and subject to, the Carveout and the terms of this Order.

56. **Subordination Agreements.** Collectively, (a) the Cyprium Subordination and Intercreditor Agreement, and (b) any other subordination agreement, intercreditor agreement, or similar agreement relating to the Prepetition Debt made by or in favor of Prepetition Agent or any Prepetition Lender from time to time, in each case, as amended, supplemented or otherwise modified from time to time.

57. **Termination Date.** At Postpetition Agent's election, the earliest to occur of: (a) the date on which Postpetition Agent provides, via facsimile, electronic mail, or overnight mail, written notice to counsel for Debtors, counsel for any Committee, and the United States Trustee of the occurrence and continuance of an Event of Default and the occurrence of the "Termination Date" (as defined in this Order); (b) the date that is thirty (30) days following the entry of this Order if the Final Order is not entered in form and substance satisfactory to Agents by such date; (c) the date of the Final Hearing, if this Order is modified at the Final Hearing in a manner unacceptable to Agents and Lenders; (d) the closing date of the sale of all or substantially all of the assets of the Debtors; (e) the date on which the Aggregate Debt is Paid in Full; and (f) May 31, 2018.

58. **Trustee.** Any trustee appointed or elected in the Cases.



**EXHIBIT B**

**Budget**

*[See attached.]*

**Exhibit B**

**Postpetition Loan Agreement**



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**DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

**dated as of January [ ], 2018,**

**by and among**

**HOBBICO, INC.  
TOWER HOBBIES, INC.,  
GREAT PLANES MODEL MANUFACTURING, INC.  
UNITED MODEL, INC.  
REVELL INC.,  
ESTES-COX CORP. and  
AXIAL R/C INC.,  
as Debtor-In-Possession Borrowers,**

**the Lenders referred to herein,  
as Lenders,**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent,  
Swingline Lender and Issuing Lender**

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DEBTOR-IN-POSSESSION CREDIT AGREEMENT, dated as of January [ ], 2018 (the "Agreement"), by and among Hobbico, Inc., an Illinois corporation ("Hobbico"), Tower Hobbies, Inc., an Illinois corporation ("Tower"), Great Planes Model Manufacturing, Inc., an Illinois corporation ("Great Planes"), United Model, Inc., an Illinois corporation ("United Model"), Revell Inc., an Illinois corporation ("Revell"), Estes-Cox Corp., a Delaware corporation ("EC") and Axial R/C Inc., a California corporation ("Axial" and together with Hobbico, Tower, Great Planes, United Model, Revell and EC, "Borrowers" and individually a "Borrower"), each as Debtors-in-Possession Borrowers, the lenders who are party to this Agreement and the lenders who may become a party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent for the Lenders.

### **STATEMENT OF PURPOSE**

WHEREAS, on January [ ], 2018 (the "Filing Date"), the Borrowers (each a "Debtor" and collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

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

WHEREAS, pursuant to that certain Third Amended and Restated Credit Agreement, dated as of July 11, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Credit Agreement"), by and among Borrowers (collectively the "Prepetition Borrowers"), the lenders from time to time party thereto (the "Prepetition Lenders"), and Wells Fargo Bank, National Association, a national banking association, as administrative agent for the Prepetition Lenders (in such capacity, the "Prepetition Agent"), Prepetition Lenders made certain revolving loans, term loans and other financial accommodations available to the Prepetition Borrowers and their Subsidiaries prior to the Filing Date on the terms and conditions set forth therein, which loans and other financial accommodations and all other Prepetition Secured Obligations (as defined below) are secured by Liens on substantially all the assets of the Prepetition Borrowers and their Subsidiaries;

WHEREAS, the Borrowers have requested the Lenders provide during the Cases a secured revolving and term credit facility (the "DIP Facility") to the Borrowers to (i) fund certain fees and expenses associated with the DIP Facility incurred during the Cases, (ii) finance the ongoing general corporate needs of the Borrowers, subject to the Variance Budget, (iii) pay for certain of the Debtors' administrative expenses incurred during the Cases, subject to the Variance Budget, (iv) to refinance certain of the Prepetition Secured Obligations, (v) conduct and pursue a sale process to be completed pursuant to Section 363 of the Bankruptcy Code, subject to the Variance Budget, and (vi) provide for adequate protection in favor of the Prepetition Agent and Prepetition Lenders; and

WHEREAS, Administrative Agent and Lenders are willing to provide the DIP Facility on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

SECTION 1.1 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below:

"Account" means an account (as that term is defined in the UCC).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Administrative Agent" means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 11.6.

"Administrative Agent's Office" means the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 12.1(c).

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

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

"Agent Consultant" means any consultant, financial advisor, appraiser, or other professional engaged by Administrative Agent or any legal counsel to Administrative Agent.

"Agents" and "Agent" means collectively, the Administrative Agent and the Prepetition Agent, or each of them, as applicable.

"Agreement" has the meaning assigned thereto in the preamble.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to the Borrowers or their Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Law" means (a) all applicable common law and principles of equity and (b) all applicable provisions of all (i) constitutions, statutes, rules, treaties, regulations and orders of all Governmental Authorities and (iii) orders, decisions, judgments, writs, injunctions and decrees of all courts (whether at law or in equity) and arbitrators.

"Applicable Margin" means, (a) with respect to Revolving Credit Loans constituting Base Rate Loans, 4.75% per annum, (b) with respect to Term Loans constituting Base Rate Loans, 7.75% per annum, and (c) with respect to the Commitment Fee, 0.50% per annum.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arrma Durango" means Arrma Durango Limited, a limited company established under the laws of the United Kingdom.

"Asset Disposition" means the sale, transfer, license, lease or other disposition of any Property (including any disposition of Equity Interests) by any Borrower or any Subsidiary thereof (or the granting of any option or other right to do any of the foregoing), and any issuance of Equity Interests by any Subsidiary of the Borrowers to any Person that is not a Borrower or any Subsidiary thereof. The term "Asset Disposition" shall not include (a) the sale of inventory in the ordinary course of business, (b) the transfer by any Borrower of its assets to any other Borrower pursuant to any other transaction permitted pursuant to Section 9.4, (c) the write-off, discount, sale or other disposition of defaulted or past-due receivables and similar obligations in the ordinary course of business and not undertaken as part of an accounts receivable financing transaction, (d) the disposition of any Hedge Agreement, (e) dispositions of Investments in cash and Cash Equivalents, (f) the transfer by any Non-Guarantor Subsidiary of its assets to any Borrower (provided that in connection with any new transfer, such Borrower shall not pay more than an amount equal to the fair market value of such assets as determined in good faith at the time of such transfer) and (g) the transfer by any Non-Guarantor Subsidiary of its assets to any other Non-Guarantor Subsidiary.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 12.9), and accepted by the Administrative Agent, in substantially the form attached as *Exhibit G* or any other form approved by the Administrative Agent.

"Assumed Prepetition Secured Obligations" means the Prepetition Hedge Obligations and Prepetition Cash Management Obligations (in each case, without giving effect to Section 11.10) other than the Specified Prepetition Obligations described in subclause (ii) of such definition.

"Attributable Indebtedness" means, on any date of determination, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease, the capitalized amount or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"Auction" has the meaning set forth on Schedule 8.21.

"Availability" means, as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Credit Loans under Section 2.1 of the Agreement (after giving effect to the Revolving Credit Outstandings at such time).

"Avoidance Action" means any and all claims and causes of action of any Borrower's estate arising under Bankruptcy Code §§ 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a), together with any proceeds therefrom.

"Avoided Payments" has the meaning set forth in Section 10.4.

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

"Bankruptcy Court" has the meaning assigned thereto in the above Statement of Purpose.

"Base Rate" means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) LIBOR for an interest period of one month plus 1.50%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or LIBOR (provided that clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable).

"Base Rate Loan" means any Loan bearing interest at a rate based upon the Base Rate as provided in Section 5.1(a).

"Borrowers" have the meanings assigned thereto in the preamble.

"Borrower Materials" has the meaning assigned thereto in Section 8.2.

"Borrowing Base" mean, as of any date of determination, the result of:

- (a) 85% of the book value of Eligible Accounts, plus
- (b) 85% of the book value of Eligible Foreign Accounts, plus
- (c) 60% of the book value of Eligible Inventory valued at the lower of cost or market on a first-in, first-out basis (which book value shall be reduced (i) by vendor rebates, (ii) to eliminate intercompany profits and (iii) for unreconciled variances between the Borrowers' perpetual Inventory and general ledger), plus
- (d) the Permitted Overadvance, less
- (e) the aggregate amount of Reserves, if any, established by Administrative Agent in its Permitted Discretion from time to time.

"Borrowing Base Certificate" means a certificate in the form of Exhibit BB-1, prepared by the Chief Restructuring Officer and Borrowers' management, in consultation with Consultant.

"Borrowing Base Overadvance" means, as of any date of determination, the amount by which the Revolving Credit Outstandings exceed the Borrowing Base (calculated without giving effect to clause (d) thereof) as of such date (based upon the most recent Borrowing Base Certificate delivered by Borrowers to Administrative Agent).

"Budget" means the initial budget (a copy of which is attached as Exhibit BB-2), in form and substance satisfactory to Administrative Agent and the Required Lenders, prepared by the Chief Restructuring Officer and Borrowers' management, in consultation with Consultant, projecting the operations of Borrowers for the then remaining thirteen-week period (or, upon request of Administrative Agent, the following thirteen-week period) and including, without

limitation, a cash flow forecast that includes, without limitation, the Projected Information; such thirteen-week cash flow forecast to be updated (in substantially the same format as the prior thirteen-week cash flow forecast) weekly by the Chief Restructuring Officer and Borrowers' management, in consultation with Consultant, and submitted to Administrative Agent in accordance with Section 8.1, and, upon acceptance in writing by Administrative Agent (after approval from the Required Lenders is obtained by the Administrative Agent), the prior Budget, as modified by such updated thirteen-week cash flow forecast, shall then constitute the Budget.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located.

"Capital Expenditures" means, with respect to the Borrowers and their Subsidiaries on a Consolidated basis, for any period, (a) the additions to property, plant and equipment and other capital expenditures that are (or would be) set forth in a consolidated statement of cash flows of such Person for such period prepared in accordance with GAAP and (b) Capital Lease Obligations during such period, but excluding expenditures for the restoration, repair or replacement of any fixed or capital asset which was destroyed or damaged, in whole or in part, to the extent financed by the proceeds of an insurance policy maintained by such Person.

"Capital Lease" of any Person means any lease of Property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP consistently applied.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capital Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Carveout" has the meaning specified in the Financing Order.

"Carveout Reserve" means a reserve established on account of the Carveout and Other Statutory Liabilities.

"Cases" means collectively the cases of Debtors jointly administered under chapter 11 of the Bankruptcy Code pending before the Bankruptcy Court, bearing case number [\_\_\_\_\_] and any superseding chapter 7 case or cases.

"Cash Collateralize" means, to deposit in a Controlled Account or to pledge and deposit with, or deliver to the Administrative Agent, or directly to the applicable Issuing Lender (with notice thereof to the Administrative Agent), for the benefit of one or more of the Issuing Lenders, the Swingline Lender or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations or Swingline Loans, cash or deposit account balances or, if the Administrative Agent and the applicable Issuing Lender and the Swingline Lender shall agree, in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent, such

Issuing Lender and the Swingline Lender, as applicable. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one hundred twenty (120) days from the date of acquisition thereof, (b) commercial paper maturing no more than one hundred twenty (120) days from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody's, (c) certificates of deposit maturing no more than one hundred twenty (120) days from the date of creation thereof issued by commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than \$500,000,000 and having a rating of "A" or better by a nationally recognized rating agency; provided that the aggregate amount invested in such certificates of deposit shall not at any time exceed \$5,000,000 for any one such certificate of deposit and \$10,000,000 for any one such bank, or (d) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables), electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, (a) at the time it enters into a Cash Management Agreement with a Borrower, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent, or (b) at the time it (or its Affiliate) becomes a Lender (including on the Closing Date), is a party to a Cash Management Agreement with a Borrower, in each case in its capacity as a party to such Cash Management Agreement.

"Cash Management Order" means that certain order authorizing the Debtors to continue using their current cash management services.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Exchange Act and the rules of the SEC thereunder as in effect on the date hereof), other than the ESOP Trust, of Equity Interests of Hobbico; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of Hobbico by Persons other than Willard K. Muirheid, Dan Bayston, Michael Parrett, Mark Richards and Ken Cutler; (c) the failure of Hobbico to own and control, directly or indirectly, 100% of the Equity Interests of each other Borrower; or (d) the appointment of a trustee of the ESOP Trust which is not an independent institutional and experienced ESOP trustee; provided, however, that if any of Mr. Muirheid, Mr. Bayston, Mr. Parrett, Mr. Richards or Mr. Cutler shall cease to serve on the board of directors of Hobbico as a result of such Person resigning or being removed from the board of directors for cause or as a result of such Person's death or disability, no Change in Control shall be deemed to occur under clause (b) of this definition as long as (i) within 60 days after such Person ceases to serve on the



board of directors, (A) Borrowers provide written notice to Administrative Agent of a proposed replacement candidate to serve as a director of Hobbico, along with reasonable information regarding such candidate, and (B) Administrative Agent approves such candidate (which approval will not be withheld, delayed or conditioned) and (ii) such replacement candidate is elected to the board of directors of Hobbico within 20 days after receipt of the approval of Administrative Agent.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law including, without limitation, Risk-Based Capital Guidelines, (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Chief Restructuring Officer" means a full-time chief restructuring officer of Borrowers acceptable to Administrative Agent that is selected and appointed by Borrowers pursuant to the terms of an engagement agreement acceptable to Administrative Agent. As of the Closing Date, the Chief Restructuring Officer is Tom S. O'Donoghue, Jr. of CR3 Partners, LLC under and pursuant to the CR3 Engagement Agreement.

"Class" means, when used in reference to any Loan, whether such Loan is a Revolving Credit Loan, Swingline Loan or Term Loan and, when used in reference to any Commitment, whether such Commitment is a Revolving Credit Commitment or a Term Loan Commitment.

"Closing Date" means the date of this Agreement.

"Code" means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder.

"Collateral" means the collateral security for the Secured Obligations pledged or granted pursuant to the Security Documents. Without limitation of the foregoing, subject to the terms of the Interim Order and the Final Order, the Collateral shall include all proceeds of Avoidance Actions.

"Collection Account" has the meaning assigned thereto in the DIP Pledge and Security Agreement.

"Commitment Fee" has the meaning assigned thereto in Section 5.3(a).

"Commitment Percentage" means, as to any Lender, such Lender's Revolving Credit Commitment Percentage or Term Loan Percentage, as applicable.

"Commitments" means, collectively, as to all Lenders, the Revolving Credit Commitments and the Term Loan Commitments of such Lenders.

"Committees" means, collectively, the official committee of unsecured creditors and any other committee formed, appointed or approved in any of the Cases.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated" means, when used with reference to financial statements or financial statement items of any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

"Consolidated Net Income" means, for any period, the net income (or loss) of the Borrowers and their Subsidiaries for such period, determined on a Consolidated basis, without duplication, in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Borrowers and their Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (c) below), in which the Borrowers or any of their Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Borrowers or any of their Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrowers or any of their Subsidiaries or is merged into or consolidated with the Borrowers or any of their Subsidiaries or that Person's assets are acquired by the Borrowers or any of their Subsidiaries except to the extent included pursuant to the foregoing clause (a), (c) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrowers or any of their Subsidiaries of such net income (i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or (ii) would be subject to any Taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or Taxes and (d) any gain or loss from Asset Dispositions during such period.

"Consultant" means a Person providing interim management services for the Borrower and/or acting as financial consultant of Borrowers; such person to be acceptable to Administrative Agent and engaged by Borrowers pursuant to the terms of an engagement agreement acceptable to Administrative Agent. As of the Closing Date, the Consultant is Keystone Consulting Group, LLC under and pursuant to the Keystone Engagement Agreement.

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

"Control Agreement" has the meaning assigned thereto in the DIP Pledge and Security Agreement.

"Controlled Account" means each deposit account and securities account that is subject to an account control agreement in form and substance satisfactory to the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at the time such control agreement is executed.

"Conversion Date" has the meaning assigned thereto in Section 7.24.

"CR3 Engagement Agreement" means that certain Engagement Agreement of CR3 Partners, LLC and Hobbico, Inc. and Domestic Subsidiaries dated as of October 24, 2017, by and among CR3 Partners, LLC and Borrowers, as amended, supplemented, or otherwise modified from time to time in form and substance satisfactory to Administrative Agent.

"Credit Facility" means, collectively, the Revolving Credit Facility, the Term Loan Facility, the Swingline Facility and the L/C Facility.

"Debtor" or "Debtors" has the meaning assigned thereto in the above Statement of Purpose.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means any of the events specified in Section 10.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.

"Defaulting Lender" means, subject to Section 5.15(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans, any Term Loan, participations in L/C Obligations or participations in Swingline Loans required to be funded by it hereunder within two Business Days of the date such Loans or participations were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrowers, the Administrative Agent, any Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of

such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the FDIC or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 5.15(b)) upon delivery of written notice of such determination to the Borrowers, each Issuing Lender, the Swingline Lender and each Lender.

"Designated Account" has the meaning assigned thereto in Section 2.4(c).

"DIP Facility" has the meaning assigned thereto in the above Statement of Purpose.

"DIP Pledge and Security Agreement" means that certain Debtor-in-Possession Pledge and Security Agreement, dated as of the Closing Date, made by Borrowers in favor of Administrative Agent.

"Dollars" or "\$" means, unless otherwise qualified, dollars in lawful currency of the United States.

"Domestic Subsidiary" means any Subsidiary organized under the laws of any political subdivision of the United States.

"Eligible Accounts" means those Accounts created by a Borrower in the ordinary course of its business, that arise out of such Borrower's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, that are properly reflected as "Eligible Accounts" in the most recently delivered Borrowing Base Certificate, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised or supplemented from time to time by Administrative Agent in its sole discretion. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, discounts, credits, allowances, and rebates. Eligible Accounts shall not include the following:

- (i) that portion of Accounts unpaid within the earlier of 60 days following its due date or 90 days following its original invoice date;
- (ii) that portion of Accounts that is disputed or subject to a claim of offset or a contra account;

(iii) that portion of Accounts not yet earned by the final delivery of goods or rendition of services, as applicable, by a Borrower to the customer, including progress billings, and that portion of Accounts for which an invoice has not been sent to the applicable Account Debtor;

(iv) Accounts constituting (a) proceeds of copyrightable material unless such copyrightable material shall have been registered with the United States Copyright Office, or (b) proceeds of patentable inventions unless such patentable inventions have been registered with the United States Patent and Trademark Office;

(v) Accounts owed by any unit of government, whether foreign or domestic (provided, however, that there shall be included in Eligible Accounts that portion of Accounts owed by such units of government for which the applicable Borrower has provided evidence satisfactory to Administrative Agent that (A) Administrative Agent has a first priority perfected security interest and (B) such Accounts may be enforced by Administrative Agent directly against such unit of government under all applicable laws);

(vi) Accounts owed by an Account Debtor located outside the United States (including all Canadian Accounts) which are not (A) backed by a bank letter of credit naming Administrative Agent as beneficiary or assigned to Administrative Agent, in Administrative Agent's possession or control, and with respect to which a control agreement concerning the letter-of-credit rights is in effect, and acceptable to the Lender in all respects, in its sole discretion, or (B) covered by a foreign receivables insurance policy acceptable to Administrative Agent in its sole discretion;

(vii) Accounts owed by an Account Debtor that is insolvent, the subject of bankruptcy proceedings or has gone out of business;

(viii) Accounts owed by a Subsidiary, Affiliate, officer or employee of a Borrower;

(ix) Accounts not subject to a duly perfected security interest in the Administrative Agent's favor or which are subject to any Lien in favor of any Person other than the Administrative Agent and Subordinated Lender;

(x) that portion of Accounts that has been restructured, extended, amended or modified;

(xi) that portion of Accounts that constitutes advertising, finance charges, service charges or sales or excise taxes;

(xii) Accounts owed by an Account Debtor, regardless of whether otherwise eligible, to the extent that the balance of such Accounts exceeds 15% of the aggregate amount of all Eligible Accounts;

(xiii) Accounts owed by an Account Debtor, regardless of whether otherwise eligible, if 20% or more of the total amount due under Accounts from such debtor is ineligible under clauses (i), (ii), or (x) above in this definition; and

(xiv) Accounts, or portions thereof, otherwise deemed ineligible by Administrative Agent in its sole discretion.

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 12.9(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 12.9(b)(iii)).

"Eligible Foreign Accounts" means those Accounts due and owing by an Account Debtor located in any province of Canada other than Quebec (collectively, "Canadian Accounts"), created by a Borrower in the ordinary course of its business, that arise out of such Borrower's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Foreign Accounts made in the Loan Documents, that are properly reflected as "Eligible Foreign Accounts" in the most recently delivered Borrowing Base Certificate, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised or supplemented from time to time by Administrative Agent in its sole discretion. In determining the amount to be included, Eligible Foreign Accounts shall be calculated net of customer deposits, unapplied cash, taxes, discounts, credits, allowances, and rebates. Eligible Foreign Accounts shall not include the following:

- (i) that portion of Canadian Accounts unpaid within the earlier of 60 days following its due date or 90 days following its original invoice date;
- (ii) that portion of Canadian Accounts that is disputed or subject to a claim of offset or a contra account;
- (iii) that portion of Canadian Accounts not yet earned by the final delivery of goods or rendition of services, as applicable, by a Borrower to the customer;
- (iv) that portion of Canadian Accounts for which an invoice has not been sent to the applicable Account Debtor;
- (v) Canadian Accounts owed by any unit of government;
- (vi) Canadian Accounts owed by an Account Debtor that is insolvent, the subject of bankruptcy proceedings or has gone out of business;
- (vii) Canadian Accounts owed by a Subsidiary, Affiliate, or employee of a Borrower;
- (viii) Canadian Accounts not subject to a duly perfected security interest in the Administrative Agent's favor or which are subject to any Lien in favor of any Person other than the Administrative Agent and Subordinated Lender;
- (ix) that portion of Canadian Accounts that has been restructured, extended, amended or modified;

(x) that portion of Canadian Accounts that constitutes advertising, finance charges, service charges or sales or excise taxes;

(xi) Canadian Accounts owed by an Account Debtor, regardless of whether otherwise eligible, to the extent that the balance of such Canadian Accounts exceeds 15% of the aggregate amount of all Eligible Foreign Accounts;

(xii) Canadian Accounts denominated in any currency other than United States dollars and Canadian dollars;

(xiii) Canadian Accounts with respect to which the applicable Borrower has not instructed the Account Debtor to pay the Canadian Account to a deposit account control agreement subject to a control agreement with Administrative Agent or Prepetition Agent, in form and substance satisfactory to Administrative Agent;

(xiv) Canadian Accounts owed by debtors located in countries, states or provinces not acceptable to the Administrative Agent in its sole discretion;

(xv) Canadian Accounts owed by an Account Debtor, regardless of whether otherwise eligible, if 20% or more of the total amount due under Canadian Accounts from such debtor is ineligible under clauses (i), (ii) or (ix) above in this definition; and

(xvi) Canadian Accounts otherwise deemed unacceptable to the Administrative Agent in its sole discretion.

"Eligible Inventory" means Inventory of a Borrower, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, that are properly reflected as "Eligible Inventory" in the most recently delivered Borrowing Base Certificate and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised, eliminated or supplemented from time to time by Administrative Agent in its sole discretion. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices. An item of Inventory having any of the following characteristics shall not be included in Eligible Inventory:

(i) Inventory that is: in-transit; located at any warehouse, job site or other premises not approved by Administrative Agent in writing; covered by any negotiable or non-negotiable warehouse receipt, bill of lading or other document of title; on consignment from any Person; on consignment to any Person or subject to any bailment unless such consignee or bailee has executed an agreement with Administrative Agent in form and substance satisfactory to Administrative Agent;

(ii) supplies, packaging, parts or sample Inventory;

(iii) work-in-process Inventory;

(iv) Inventory that is damaged, obsolete, slow moving or not currently saleable in the normal course of the applicable Borrower's operations;

(v) Inventory that a Borrower has returned, has attempted to return, is in the process of returning or intends to return to the vendor thereof;

(vi) Inventory that is perishable or live;

(vii) Inventory manufactured by a Borrower pursuant to a license unless the applicable licensor has agreed in writing to permit Administrative Agent to exercise its rights and remedies against such Inventory;

(viii) Inventory that is subject to a Lien in favor of any Person other than Administrative Agent, Prepetition Agent and the Subordinated Lender; and

(ix) Inventory otherwise deemed ineligible by Administrative Agent in its sole discretion.

"Employee Benefit Plan" means (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of any Borrower or any ERISA Affiliate or (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Borrower or any current or former ERISA Affiliate.

"Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to public health or the environment.

"Environmental Laws" means any and all federal, foreign, state, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of public health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

"Equity Interests" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person and (f) any and all warrants, rights or options to purchase any of the foregoing.



"Equity Issuance" means (a) any issuance by the Borrowers of shares of their Equity Interests to any Person that is not a Borrower (including, without limitation, in connection with the exercise of options or warrants or the conversion of any debt securities to equity) and (b) any capital contribution from any Person that is not a Borrower into any Borrower or any Subsidiary thereof. The term "Equity Issuance" shall not include (A) any Asset Disposition or (B) any Indebtedness Issuance or (C) any reissuance of Hobbico shares to the ESOP as permitted by the ESOP Pledge Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder.

"ERISA Affiliate" means any Person who together with any Borrower or any of its Subsidiaries is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

"ESOP" means, collectively, the ESOP Plan and the ESOP Trust.

"ESOP Collateral Assignment" means that certain Collateral Assignment of ESOP Transaction Documents dated as of October 21, 2005 herewith by Hobbico in favor of Prepetition Agent (for the ratable benefit of the Prepetition Secured Parties) pursuant to which Hobbico collaterally assigned to Prepetition Agent all of Hobbico's rights under the ESOP Transaction Documents (for the ratable benefit of the Prepetition Secured Parties).

"ESOP Contributions" means, for any period, the cash contributions made by Hobbico to the ESOP.

"ESOP Loan" means the loan by Hobbico to the ESOP Trust in the aggregate principal amount of \$5,000,000 made on October 21, 2005.

"ESOP Loan Agreement" means the ESOP Loan Agreement, by and between the ESOP and Hobbico, pursuant to which Hobbico made the ESOP Loan to the ESOP.

"ESOP Note" means the Term Note by the ESOP in favor of Hobbico evidencing the ESOP Loan.

"ESOP Plan" means the employee benefit plan titled "Hobbico, Inc. Employee Stock Ownership Plan" and adopted and maintained by Hobbico pursuant to the applicable ESOP Plan Documents.

"ESOP Plan Documents" means, collectively, the ESOP Plan and the ESOP Trust, each as may be amended, supplemented or modified as provided herein and therein.

"ESOP Pledge Agreement" means the ESOP Pledge Agreement pursuant to which the ESOP pledged the shares acquired pursuant to the ESOP Subscription Agreement to Hobbico as collateral security for the ESOP's obligations under the ESOP Note.

"ESOP Subscription Agreement" means the agreement among the trustee of the ESOP, Hobbico and the Selling Shareholders which provided for the purchase by the ESOP, from Hobbico, of 100% of the Equity Interests of Hobbico.

"ESOP Transaction" means the series of transactions contemplated by and described in the ESOP Transaction Documents, which transactions were consummated on October 21, 2005, including but not limited to (i) the ESOP's purchase of 100% of the Equity Interests of Hobbico, (ii) the ESOP Loan and the purchase money transaction in which the ESOP Trust purchased such Equity Interests under the ESOP Subscription Agreement and (iii) the issuance of the ESOP Note to Hobbico and corresponding pledge to Hobbico of 100% of the Equity Interests of Hobbico by the ESOP to secure such ESOP Note, subject to the release of such Equity Interests as and to the extent of payments upon the ESOP Loans, as provided in the ESOP Plan, ERISA and the Code and the regulations and rulings thereunder.

"ESOP Transaction Documents" means, collectively, the ESOP Subscription Agreement, the ESOP Note, ESOP Loan Agreement and the ESOP Pledge Agreement, each as may be amended, supplemented or modified as provided herein and therein.

"ESOP Trust" means the trust agreement, between Hobbico and GreatBanc Trust Company, as trustee, entitled "Hobbico, Inc. Employee Stock Ownership Plan Trust," adopted and maintained by Hobbico pursuant to the applicable ESOP Plan Documents.

"Eurodollar Reserve Percentage" means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

"Event of Default" means any of the events specified in Section 10.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Swap Obligation" means, with respect to any Borrower, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Borrower for or the guarantee of such Borrower of, or the grant by such Borrower of a security interest to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Borrower's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the guarantee of such Borrower or the grant of such security interest becomes effective with respect to such Swap Obligation such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Borrower. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or

security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to the applicable Law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrowers under Section 5.12(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.11, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) United States Taxes attributable to such Recipient's failure to comply with Section 5.11(g) and (d) any United States of America federal withholding Taxes imposed under FATCA.

"Existing Collateral" has the meaning assigned thereto in Section 8.22.

"Existing Letters of Credit" means those letters of credit existing on the Closing Date, issued under the Prepetition Credit Agreement and identified on Schedule 1.1(a).

"Extensions of Credit" means, as to any Lender at any time, (a) an amount equal to the sum of (i) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (ii) such Lender's Revolving Credit Commitment Percentage of the L/C Obligations then outstanding, (iii) such Lender's Revolving Credit Commitment Percentage of the Swingline Loans then outstanding, and (iv) the aggregate principal amount of the Term Loans made by such Lender then outstanding, or (b) the making of any Loan or participation in any Letter of Credit by such Lender, as the context requires.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"FDIC" means the Federal Deposit Insurance Corporation.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day (or, if such day is not a Business Day, for the immediately preceding Business Day), as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the average of the quotation for such day on such

transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent.

"Fee Letter" means that certain Fee Letter of even date herewith among Borrowers and Administrative Agent.

"Filing Date" has the meaning assigned thereto in the above Statement of Purpose.

"Final Order" means the Final Order as defined in the Interim Order.

"Financing Order" means (i) until entry of the Final Order, the Interim Order, and (ii) from and after entry of the Final Order, the Final Order, in each case as the same may be amended or modified from time to time in a manner satisfactory to the Debtors and the Administrative Agent.

"First Tier Foreign Subsidiary" means any Foreign Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code and the Equity Interests of which are owned directly by any Borrower.

"Fiscal Year" means the fiscal year of the Borrowers and their Subsidiaries ending on December 31.

"Foreign Lender" means (a) if any Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if any Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

"Foreign Subsidiary" means any Subsidiary that is not a Domestic Subsidiary.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Lender, other than such L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of outstanding Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

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

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

"Governmental Approvals" means all authorizations, consents, approvals, permits, licenses, certificates of occupancy or exemptions of, and all registrations and filings with or issued by, any Governmental Authorities.

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

"Guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (e) for the purpose of assuming in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (whether in whole or in part).

"Hazardous Materials" means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law, (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to public health or the environment and are or become regulated by any Governmental Authority, (c) the presence of which require investigation or remediation under any Environmental Law or common law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other Governmental Approval, (e) which are deemed by a Governmental Authority to constitute a nuisance or a trespass which pose a health or safety hazard to Persons or neighboring properties, or (f) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

"Hedge Agreement" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor

transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement.

"Hedge Bank" means any Person that, (a) at the time it enters into a Hedge Agreement with a Borrower permitted under Article IX, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent or (b) at the time it (or its Affiliate) becomes a Lender (including on the Closing Date), is a party to a Hedge Agreement with a Borrower, in each case in its capacity as a party to such Hedge Agreement.

"Hedge Termination Value" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

"Hobbico Germany" means Hobbico Deutschland Holding GmbH, a German limited liability company.

"Hobbico Stock" means the shares of common stock of Hobbico issued in the name of the trustee of the ESOP Trust.

"Indebtedness" means, with respect to any Person at any date and without duplication, the sum of the following:

(a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person;

(b) all obligations to pay the deferred purchase price of property or services of any such Person (including, without limitation, all obligations under non-competition, earn-out or similar agreements), except trade payables arising in the ordinary course of business not more than ninety (90) days past due, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person;

(c) the Attributable Indebtedness of such Person with respect to such Person's Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

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

(e) all Indebtedness of any other Person secured by a Lien on any asset owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements except trade payables arising in the ordinary course of business), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all obligations, contingent or otherwise, of any such Person relative to the face amount of letters of credit, whether or not drawn, including, without limitation, any Reimbursement Obligation, and banker's acceptances issued for the account of any such Person;

(g) all net obligations of such Person under any Hedge Agreements; and

(h) all Guarantees of any such Person with respect to any of the foregoing (collectively, "Contingent Obligations").

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date.

"Indebtedness Issuance" means the issuance of any Indebtedness for borrowed money by any Borrower or any of its Subsidiaries.

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

"Indemnitee" has the meaning assigned thereto in Section 12.3(b).

"Indication of Interest" has the meaning set forth on Schedule 8.21.

"Initial Issuing Lender" means Wells Fargo.

"Initial Term Loan" means the term loan made, or to be made, to the Borrowers by the Term Loan Lenders pursuant to Section 4.1.

"Insurance and Condemnation Event" means the receipt by any Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective Property.

"Intellectual Property" has the meaning assigned thereto in Section 7.7.

"Interim Order" means that certain Order Authorizing Debtors to: (A) Use Cash Collateral on an Emergency Basis Pending a Final Hearing; (B) Incur Postpetition Debt on an Emergency Basis Pending a Final Hearing; and (C) Grant Adequate Protection and Provide Security and Other Relief to Wells Fargo Bank, National Association, as Agent and the Lenders, entered on January [ ], 2018 in the Cases at docket number [ ].

"Investment Banker" is defined in Section 8.20.

"Investments" has the meaning assigned thereto in Section 9.3.

"Inventory" means inventory (as that term is defined in the UCC).

"IRS" means the United States Internal Revenue Service.

"ISP98" means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

"Issuing Lender" means (a) with respect to Letters of Credit issued or deemed issued hereunder on or after the Closing Date, (i) the Initial Issuing Lender and (ii) any other Revolving Credit Lender to the extent it has agreed in its sole discretion to act as an "Issuing Lender" hereunder and that has been approved in writing by the Borrowers and the Administrative Agent (such approval by the Administrative Agent not unreasonably be delayed or withheld) as an "Issuing Lender" hereunder, in each case in its capacity as issuer of any Letter of Credit and (b) with respect to the Existing Letters of Credit, Wells Fargo, in its capacity as issuer thereof.

"Keystone Engagement Agreement" means, collectively, the Arrangement Letter/Engagement Agreement dated as of September 21, 2016, by and between Keystone Consulting Group, LLC and Hobbico, Inc., as amended by that certain CRO Addendum and Amendment to the Arrangement Letter/Engagement Agreement between Keystone Consulting Group, LLC and Hobbico, Inc. dated as of October 13, 2016, by and between Keystone Consulting Group, LLC and Hobbico, Inc., as the same may be further amended, restated, supplemented or otherwise modified in a manner acceptable to Administrative Agent.

"Law" means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

"L/C Commitment" means, as to any Issuing Lender, the obligation of such Issuing Lender to issue Letters of Credit for the account of the Borrowers or one or more of its Subsidiaries from time to time in an aggregate amount equal to (a) for the Initial Issuing Lender, the amount set forth opposite the name of such Initial Issuing Lender on Schedule 1.1(a) and (b) for any other Issuing Lender becoming an Issuing Lender after the Closing Date, such amount as separately agreed to in a written agreement among the Borrowers and such Issuing Lender (which such agreement shall be promptly delivered to the Administrative Agent upon execution), in each case of clauses (a) and (b) above, any such amount may be changed after the Closing Date in a written agreement between the Borrowers and such Issuing Lender (which such agreement shall be promptly delivered to the Administrative Agent upon execution); provided that the L/C Commitment with respect to any Person that ceases to be an Issuing Lender for any



reason pursuant to the terms hereof shall be \$0 (subject to the Letters of Credit of such Person remaining outstanding in accordance with the provisions hereof).

"L/C Facility" means the letter of credit facility established pursuant to Article III.

"L/C Obligations" means at any time, an amount equal to the sum of (a) the aggregate undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to Section 3.5.

"L/C Participants" means, with respect to any Letter of Credit, the collective reference to all the Revolving Credit Lenders other than the applicable Issuing Lender.

"L/C Sublimit" means the lesser of (a) Seven Hundred Fifty Thousand Dollars (\$750,000) and (b) the Revolving Credit Commitment.

"Lender" means the Persons listed on Schedule 1.1(b) and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Assumption, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

"Lending Office" means, with respect to any Lender, the office of such Lender maintaining such Lender's Extensions of Credit.

"Letter of Credit Application" means an application, in the form specified by the applicable Issuing Lender from time to time, requesting such Issuing Lender to issue a Letter of Credit.

"Letter of Intent" has the meaning assigned thereto on Schedule 8.21.

"Letters of Credit" means the collective reference to letters of credit issued pursuant to Section 3.1 and upon entry of the Final Order, the Existing Letters of Credit. Notwithstanding anything to the contrary contained herein, a letter of credit issued by any Issuing Lender (other than Wells Fargo at any time it is also acting as Administrative Agent) shall not be a "Letter of Credit" for purposes of the Loan Documents until such time as the Administrative Agent has been notified in writing of the issuance thereof by the applicable Issuing Lender.

"LIBOR" means, for any interest rate calculation with respect to a Base Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for an interest period equal to one month (commencing on the date of determination of such interest rate) which appears on the Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day. If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page) then "LIBOR" for such Base Rate Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m.

(London time) on such date of determination for a period equal to one month commencing on such date of determination. Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, if LIBOR determined as provided above would be less than 0.0% per annum, then LIBOR shall be deemed to be 0.0% per annum.

"License" has the meaning assigned thereto in Section 8.5.

"Lien" means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"Loan Documents" means, collectively, this Agreement, the Interim Order, the Final Order, each Note, the Letter of Credit Applications, the Security Documents, the Fee Letter, ESOP Collateral Assignment, and each other document, instrument, certificate and agreement executed and delivered by the Borrowers or any of their respective Subsidiaries in favor of or provided to the Administrative Agent or any Secured Party in connection with this Agreement or otherwise referred to herein or contemplated hereby (excluding any Secured Hedge Agreement and any Secured Cash Management Agreement).

"Loans" means the collective reference to the Revolving Credit Loans, the Term Loan and the Swingline Loans, and "Loan" means any of such Loans.

"Material Adverse Effect" means, with respect to the Borrowers and their Subsidiaries, (a) a material adverse effect on the operations, business, assets, properties, liabilities (actual or contingent) or condition (financial or otherwise) of such Persons, taken as a whole, (b) a material impairment of the ability of any such Person to perform its obligations under the Loan Documents to which it is a party, (c) a material impairment of the rights and remedies of the Administrative Agent, any Lender, the Prepetition Agent or any Prepetition Lender under any Loan Document or Prepetition Loan Document or (d) an impairment of the legality, validity, binding effect or enforceability against any Borrower of any Loan Document or Prepetition Loan Document to which it is a party in each case except for such effect that results or resulted from the commencement of the Cases and the events that customarily and reasonably result from events leading up to and following the commencement of the Cases.

"Material Indebtedness" means Indebtedness in an outstanding principal amount of \$750,000 or more in the aggregate (or the equivalent thereof in any currency other than Dollars).

"Material Indebtedness Agreement" means any agreement under which any Material Indebtedness was created or is governed or which provides for the incurrence of Indebtedness in an amount which would constitute Material Indebtedness (whether or not an amount of Indebtedness constituting Material Indebtedness is outstanding thereunder).

"Material Customer" shall mean the customers of Borrowers that accounted for more than \$3,000,000 of gross sales by Borrowers during the trailing twelve month period ended November 30, 2017.

"Material Supplier" shall mean the suppliers to Borrowers of raw materials, work-in-progress or finished goods that accounted for more than \$3,000,000 of total purchases of such raw materials, work-in-progress or finished goods by Borrowers during the trailing twelve month period ended November 30, 2017.

"Minimum Collateral Amount" means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 105% of the sum of (i) the Fronting Exposure of the Issuing Lender with respect to Letters of Credit issued and outstanding at such time and (ii) the Fronting Exposure of the Swingline Lender with respect to all Swingline Loans outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at such time in their sole discretion.

"Moody's" means Moody's Investors Service, Inc.

"Mortgages" means each mortgage, deed of trust or other document listed on Schedule 1.1(c) together with each other mortgage or deed of trust or similar document executed and delivered to Administrative Agent pursuant to the terms hereof or otherwise in connection herewith after the Closing Date.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Borrower or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding seven (7) years.

"Net Cash Proceeds" means, as applicable, (a) with respect to any Asset Disposition or Insurance and Condemnation Event, the gross proceeds received by any Borrower or any of its Subsidiaries therefrom (including any cash, Cash Equivalents, deferred payment pursuant to, or by monetization of, a note receivable or otherwise, as and when received) less the sum of (i) [reserved], (ii) to the extent included in the Budget and the Variance Budget, all reasonable and customary out-of-pocket fees and expenses incurred in connection with such transaction or event and (iii) the principal amount of, premium, if any, and interest on any Indebtedness secured by a Lien on the asset (or a portion thereof) disposed of, which Indebtedness is required to be repaid in connection with such transaction or event, and (b) with respect to any Equity Issuance or Indebtedness Issuance, the gross cash proceeds received by any Borrower or any of its Subsidiaries therefrom less, to the extent included in the Budget and the Variance Budget, all reasonable and customary out-of-pocket legal, underwriting and other fees and expenses incurred in connection therewith.

"Non-Consenting Lender" means any Lender that does not approve any consent, waiver, amendment, modification or termination that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 12.2 and (ii) has been approved by the Required Lenders.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Guarantor Subsidiary" means any Subsidiary of any Borrower that is not also a Borrower.

"Notes" means the collective reference to the Revolving Credit Notes, the Swingline Note and the Term Loan Notes.

"Notice of Account Designation" has the meaning assigned thereto in Section 2.3(b).

"Notice of Borrowing" has the meaning assigned thereto in Section 2.3(a).

"Notice of Prepayment" has the meaning assigned thereto in Section 4.4(b)(vi).

"Obligations" means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of the Cases) the Loans, (b) the L/C Obligations and (c) all other fees and commissions (including attorneys' fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Borrowers and each of their respective Subsidiaries to the Lenders, the Issuing Lender or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Borrower or any Subsidiary thereof of the Cases, or any other proceeding under any Debtor Relief Laws, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

"Operating Lease" means, as to any Person as determined in accordance with GAAP, any lease of Property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Statutory Liabilities" means accrued and unpaid statutory liabilities of the Borrowers which may result in claims that have lien priority or priority of payment over all or any portion of the Obligations, are a statutory trust and/or which are legally required to be paid prior to the Payment In Full of such Obligations, other than the amount of those liabilities included in the Carveout.

"Other Taxes" has the meaning assigned thereto in Section 5.11(b).

"Paid in Full", "paid in full", and "Payment In Full" mean, with respect to the Secured Obligations or the Prepetition Secured Obligations, as applicable, unless otherwise agreed to in writing by the Lenders and the Prepetition Lenders, as applicable: (a) the termination of this Agreement and the other Loan Documents or the Prepetition Credit Agreement and the other Prepetition Loan Documents, as applicable; (b) the indefeasible payment in full in cash of all

Secured Obligations or Prepetition Secured Obligations, as applicable, together with all accrued and unpaid interest and fees thereon; (c) all commitments under this Agreement or commitments under the Prepetition Credit Agreement, as applicable, shall have terminated or expired; (d) Administrative Agent or Prepetition Agent, as applicable, shall have received cash collateral in such amount as the applicable Issuing Lender or the applicable "Issuing Lender" (as defined in the Prepetition Credit Agreement), as applicable, deems is reasonably necessary to secure all contingent reimbursement obligations relating to any Letters of Credit or any "Letters of Credit" (as defined in the Prepetition Credit Agreement); (e) Administrative Agent or Prepetition Agent, as applicable, shall have received cash collateral in such amount as the applicable Cash Management Bank or the applicable "Cash Management Bank" (as defined in the Prepetition Credit Agreement), as applicable, deems is reasonably necessary to secure all obligations relating to any Cash Management Agreements or any "Cash Management Agreements" (as defined in the Prepetition Credit Agreement); (f) the indefeasible payment or repayment in full in cash of any and all other Secured Obligations or Prepetition Secured Obligations, as applicable, including, without limitation, the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of any other obligation) under any Hedge Agreement provided by any Hedge Bank or any "Hedge Agreement" provided by any "Hedge Bank" (as such terms are defined in the Prepetition Credit Agreement); (g) all claims of the Debtors against Administrative Agent, Lenders and the other Secured Parties, or of Prepetition Borrowers and "Guarantors" (as such term is defined in the Prepetition Credit Agreement) against Prepetition Agent, Prepetition Lenders and the other Prepetition Secured Parties, as applicable, arising on or before the payment date shall have been released on terms acceptable to Administrative Agent or Prepetition Agent, as applicable; and (h) Administrative Agent or Prepetition Agent, as applicable, shall have received cash collateral in such amount as Administrative Agent or Prepetition Agent, as applicable, deems is reasonably necessary to secure Administrative Agent and the other Secured Parties, or Prepetition Agent and the other Prepetition Secured Parties, as applicable, in respect of any asserted or threatened (in writing) claims, losses, demands, actions, suits, proceedings, investigations, liabilities, fines, fees, costs, expenses (including attorneys' fees and expenses), penalties, or damages for which any of the Administrative Agent and the other Secured Parties, or Prepetition Agent and the other Prepetition Secured Parties, as applicable, may be entitled to indemnification or reimbursement by any Debtor pursuant to the terms of this Agreement, the other Loan Documents, the Prepetition Credit Agreement, or the other Prepetition Loan Documents.

"Participant" has the meaning assigned thereto in Section 12.9(d).

"Participant Register" has the meaning assigned thereto in Section 12.9(d).

"Participating Member State" means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"PATRIOT Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor agency.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained, funded or administered for the employees of any Borrower or any ERISA Affiliate or (b) has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Borrower or any current or former ERISA Affiliates.

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Liens" means the Liens permitted pursuant to Section 9.2.

"Permitted Overadvance" means, as of any date of determination, the projected amount of overadvances set forth in the Variance Budget for the corresponding week, as reduced (or deemed reduced) pursuant to Section 4.4(b)(vi).

"Permitted Priority Liens" means (a) the Carveout and (b) all Liens in favor of third parties, which third-party liens, as of the Filing Date, had priority under applicable law over the Liens in favor of the Prepetition Agent, solely to the extent that such Liens are valid and non-avoidable as of the Filing Date and are either perfected as of the Filing Date or subject to perfection after the Filing Date pursuant to Bankruptcy Code § 546(b), were not subordinated by agreement or applicable law, and do not secured Indebtedness incurred on or after the Filing Date; in each case subject to the terms of the Financing Order.

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

"Platform" has the meaning assigned thereto in Section 8.2.

"Postpetition Charges" has the meaning assigned thereto in the Financing Order.

"Prime Rate" means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

"Prepetition Agent" has the meaning assigned thereto in the above Statement of Purpose.

"Prepetition Borrowers" has the meaning assigned thereto in the above Statement of Purpose.

"Prepetition Cash Management Obligations" means the Prepetition Secured Obligations in respect of "Secured Cash Management Agreements" (as defined in the Prepetition Credit Agreement).

"Prepetition Credit Agreement" has the meaning assigned thereto in the above Statement of Purpose.

"Prepetition Hedge Obligations" means the Prepetition Secured Obligations in respect of "Secured Hedge Agreements" (as defined in the Prepetition Credit Agreement).

"Prepetition L/C Obligations" means the "L/C Obligations" as defined in the Prepetition Credit Agreement.

"Prepetition Lenders" has the meaning assigned thereto in the above Statement of Purpose.

"Prepetition Loan Documents" means the "Loan Documents" as defined in the Prepetition Credit Agreement.

"Prepetition Obligations" means the "Obligations" as defined in the Prepetition Credit Agreement, and shall include, without limitation, all Prepetition Revolving Obligations and Prepetition Term Obligations.

"Prepetition Revolving Credit Outstandings" means the "Revolving Credit Outstandings" as defined in the Prepetition Credit Agreement, which shall include any Reinstated Prepetition Obligations.

"Prepetition Revolving Loans" means any "Revolving Credit Loan" (including Reinstated Prepetition Obligations) together with any "Swingline Loan", as each such term is defined in the Prepetition Credit Agreement as in effect on the Filing Date.

"Prepetition Revolving Obligations" means the aggregate outstanding amount of the Prepetition Revolving Loans (including Reinstated Prepetition Obligations), together with principal, interest, fees, costs and other charges incurred before and after the commencement of the Cases with respect thereto.

"Prepetition Secured Obligations" means the "Secured Obligations" as defined in the Prepetition Credit Agreement.

"Prepetition Secured Parties" means the "Secured Parties" as defined in the Prepetition Credit Agreement.

"Prepetition Term Loans" means any "Term Loan" as defined in the Prepetition Credit Agreement as in effect on the Filing Date.

"Prepetition Term Obligations" means the aggregate outstanding amount of the Prepetition Term Loan, together with principal, interest, fees, costs and other charges incurred before and after the commencement of the Cases with respect thereto.

"Projected Information" means (i) the projected weekly operating cash receipts for each week, (ii) the projected weekly disbursements for each week, (iii) the projected net weekly cash flow for each week, (iv) the projected weekly net sales for each week, (v) the projected Availability for each week, (vi) the projected aggregate principal amount of Revolving Credit Loans outstanding as of the last day of each week, (vii) the projected aggregate maximum principal amount of Revolving Credit Loans outstanding for each week, (viii) the projected

amount of the Permitted Overadvance for each week, and (ix) such other information that Administrative Agent may reasonably request from time to time.

"Property" means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

"Qualified Appraiser" has the meaning assigned in Section 7.9(t).

"Qualified Investment Banker Engagement" means the engagement and retention by the Borrowers of an investment banker satisfactory to Administrative Agent, at Borrowers' sole cost and expense and on terms and conditions satisfactory to Administrative Agent, for purposes of preparing, marketing, and consummating the sale of all or substantially all of the assets of the Borrowers, and such other potential strategic alternatives (including, without limitation, potential equity sales, refinancing transactions, capital investment raise transactions, and other transactions) as may be acceptable to the Borrowers and the Administrative Agent, the consummation of each of which shall be subject to the terms and provisions of this Agreement.

"Reaffirmation of Prepetition Loan Documents" means that certain Reaffirmation of Prepetition Loan Documents dated on or about the date hereof by and among Borrowers, Administrative Agent and the Lenders.

"Recipient" means (a) the Administrative Agent, (b) any Lender, (c) any Issuing Lender, and (d) any Swingline Lender, as applicable.

"Register" has the meaning assigned thereto in Section 12.9(c).

"Registration Effective Date" has the meaning assigned thereto in Section 11.6(a).

"Reimbursement Obligation" means the obligation of the Borrowers to reimburse any Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit issued by such Issuing Lender.

"Reinstated Prepetition Obligations" means any Prepetition Secured Obligations constituting an Avoided Payment, to the extent such obligations have been reinstated, in each case, pursuant to, and subject to the requirements and terms of, a final and nonappealable order of the Bankruptcy Court.

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

"Rentals" means, for the trailing 12 month period ending on any date of determination, the aggregate fixed amounts paid by the Borrowers on a consolidated basis under any lease of real or personal property having an original term (including any required renewals or any renewals at the option of the lessor or lessee) of one year or more, but does not include any amounts payable under Capital Leases.



"Required Lenders" means, at any time, Lenders having Total Credit Exposures representing more than fifty percent (50)% of the Total Credit Exposures of all Lenders, provided, in no event shall Required Lenders include fewer than two (2) unaffiliated Lenders at any time when there are two (2) or more unaffiliated Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Required Revolving Credit Lenders" means, at any date, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the sum of the aggregate amount of the Revolving Credit Commitment or, if the Revolving Credit Commitment has been terminated, any combination of Revolving Credit Lenders holding more than fifty percent (50%) of the aggregate Extensions of Credit under the Revolving Credit Facility; provided that the Revolving Credit Commitment of, and the portion of the Extensions of Credit under the Revolving Credit Facility, as applicable, held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

"Reserves" means, as of any date of determination, those reserves that Administrative Agent deems necessary or appropriate, in its Permitted Discretion and subject to and in accordance with Section 2.1(c), to establish and maintain (including, without limitation, reserves with respect to (a) sums that any Borrower or its Subsidiaries are required to pay under any Section of the Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, (b) amounts owing by any Borrower or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the discretion of Administrative Agent likely would have a priority superior to the Administrative Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral, (c) the Carveout Reserve, and (d) the Specified Reserve) with respect to the Borrowing Base or the aggregate Revolving Credit Commitments.

"Responsible Officer" means, as to any Person, the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of such Person or any other officer of such Person designated in writing by the Borrowers and reasonably acceptable to the Administrative Agent. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

"Restricted Payment" has the meaning assigned thereto in Section 9.6.

"Revell GmbH" means Revell GmbH, a German limited liability company (*Gesellschaft mit beschränkter Haftung*) registered with the commercial register (*Handelsregister*) at the local court (*Amtsgericht*) of Bad Oeynhausen under HRB 10158.

"Revolving Credit Commitment" means (a) as to any Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Credit Loans to, and to purchase

participations in L/C Obligations and Swingline Loans for the account of, the Borrowers hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on the Register, as such amount may be modified at any time or from time to time pursuant to the terms hereof and (b) as to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Credit Loans, as such amount may be modified at any time or from time to time pursuant to the terms hereof. The aggregate Revolving Credit Commitment of all the Revolving Credit Lenders from and after the Closing Date shall be \$45,000,000. The Revolving Credit Commitment of each Revolving Credit Lender as of the Closing Date is set forth opposite the name of such Lender on Schedule 1.1(b).

"Revolving Credit Commitment Percentage" means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders represented by such Revolving Credit Lender's Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments. The Revolving Credit Commitment Percentage of each Revolving Credit Lender as of the Closing Date is set forth opposite the name of such Lender on Schedule 1.1(b).

"Revolving Credit Exposure" means, as to any Revolving Credit Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Revolving Credit Lender's participation in L/C Obligations and Swingline Loans at such time.

"Revolving Credit Facility" means the revolving credit facility established pursuant to Article II.

"Revolving Credit Lenders" means, collectively, all of the Lenders with a Revolving Credit Commitment.

"Revolving Credit Loan" means any revolving loan made to the Borrowers pursuant to Section 2.1, and all such revolving loans collectively as the context requires.

"Revolving Credit Maturity Date" means the earliest to occur of (a) May 31, 2018, (b) written notice from Administrative Agent to Debtors of the occurrence of an Event of Default and of the "Termination Date" as defined in the Financing Order, and (c) the closing date of a Sale or any other sale of substantially all of the Debtors' assets.

"Revolving Credit Note" means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing the Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form attached as *Exhibit A-1*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Revolving Credit Outstandings" means the sum of (a) with respect to Revolving Credit Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; plus (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving

effect to any Extensions of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date; plus (c) without duplication of the foregoing amounts, the Prepetition Revolving Credit Outstandings.

"Revolving Extensions of Credit" means (a) any Revolving Credit Loan then outstanding, (b) any Letter of Credit then outstanding or (c) any Swingline Loan then outstanding.

"Roll-up Revolving Loan" means any revolving loan made to the Borrowers pursuant to Section 2.1 for application to the Prepetition Revolving Obligations.

"S&P" means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

"Sale" has the meaning assigned thereto in Section 8.21.

"Sale Closing" has the meaning assigned thereto on Schedule 8.21.

"Sale Covenants" has the meaning assigned thereto in Section 8.21.

"Sale Order" has the meaning assigned thereto on Schedule 8.21.

"Sale Procedures Motion" has the meaning assigned thereto on Schedule 8.21.

"Sale Procedures Order" has the meaning assigned thereto on Schedule 8.21.

"Same Day Funds" means immediately available funds.

"Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, or as otherwise published from time to time.

"Sanctioned Person" means (a) a Person named on the list of "Specially Designated Nationals and Blocked Persons" maintained by OFAC available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or as otherwise published from time to time, (b) a Person named on the lists maintained by the United Nations Security Council available at [http://www.un.org/sc/committees/list\\_comp.html](http://www.un.org/sc/committees/list_comp.html), or as otherwise published from time to time, (c) a Person named on the lists maintained by the European Union available at [http://eeas.europa.eu/cfsp/sanctions/consol-list\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm), or as otherwise published from time to time, (d) a Person named on the lists maintained by Her Majesty's Treasury available at [http://www.hm-treasury.gov.uk/fin\\_sanctions\\_index.htm](http://www.hm-treasury.gov.uk/fin_sanctions_index.htm), or as otherwise published from time to time, or (e) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those

administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"Secured Cash Management Agreement" means any Cash Management Agreement between or among any Borrower and any Cash Management Bank.

"Secured Hedge Agreement" means any Hedge Agreement between or among any Borrower and any Hedge Bank.

"Secured Obligations" means collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Borrower under (i) any Secured Hedge Agreement (other than an Excluded Swap Obligation) and (ii) any Secured Cash Management Agreement (including, in the case of each of clauses (a) and (b), reasonable attorneys' fees and expenses payable as provided in this Agreement or any other Loan Document or Prepetition Loan Document and any interest (including, without limitation, default rate interest), fees, or expenses that accrue after the filing of the Cases or any other insolvency proceeding (including, without limitation, under any Debtor Relief Law), regardless of whether allowed or allowable in whole or in part as a claim in any such insolvency proceeding).

"Secured Parties" means, collectively, the Administrative Agent, the Lenders, the Issuing Lenders, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5, any other holder from time to time of any of any Secured Obligations and, in each case, their respective successors and permitted assigns.

"Security Documents" means any "Security Documents" as such term is defined in the Prepetition Credit Agreement to which any Borrower is a party, the Mortgages, the ESOP Collateral Assignment, the DIP Pledge and Security Agreement, the Reaffirmation of Prepetition Loan Documents and each other agreement or writing pursuant to which any Borrower pledges or grants a security interest in any Property or assets securing the Secured Obligations, as each such document is amended, supplemented or otherwise modified from time to time.

"Specified Prepetition Obligations" means (i) Prepetition Term Loans in a principal amount equal to \$10,600,000, together with all interest, fees, costs, charges and other Prepetition Obligations accrued in respect thereof and (ii) as of any date of determination, the percentage of Prepetition Hedge Obligations and Prepetition Cash Management Obligations obtained by dividing (a) the then principal amount of outstanding Prepetition Obligations and the face amount of extent Existing Letters of Credit not deemed reissued under this Agreement by (b) the sum of (i) the then principal amount outstanding Prepetition Obligations, (ii) the face amount of then extant Existing Letters of Credit not deemed reissued under this Agreement (iii) the aggregate principal amount of all Prepetition Obligations that have been Paid in Full pursuant to Paragraph 2(d) of the Financing Order, and (iv) all Existing Letters of Credit constituting Letters of Credit under this Agreement.

"Specified Reserves" means a reserve in an amount equal to the sum of any claims under § 503(b)(9) of the Bankruptcy Code.

"Stalking Horse Purchase Agreement" has the meaning assigned thereto on Schedule 8.21.

"STI Plan" means Borrowers' Short Term Equity-Based Incentive Plan.

"Subordinated Indebtedness" means Indebtedness of Borrowers in a principal amount not to exceed \$30,000,000 plus interest accrued thereon to the extent such interest is capitalized and paid-in-kind pursuant to the terms of the Subordinated Loan Agreement and subordinated in right of payment to the Prepetition Secured Obligations pursuant to the terms of the Subordination Agreement.

"Subordinated Lender" means Cyprum Investors IV AIV I LP, a Delaware limited partnership.

"Subordinated Loan" means that certain loan made by the Subordinated Lenders in the amount of \$30,000,000 pursuant to the Subordinated Loan Documents.

"Subordinated Loan Agreement" means that certain Securities Purchase Agreement dated as of July 11, 2014 by and among Subordinated Lenders and Borrowers, as restated, supplemented or otherwise modified from time to time to the extent permitted by the Subordination Agreement.

"Subordinated Loan Documents" means the Subordinated Loan Agreement, the Subordinated Notes and all agreements, instruments and documents executed in connection therewith.

"Subordinated Notes" means those promissory notes issued pursuant to the Subordinated Loan Agreement evidencing the Subordinated Indebtedness.

"Subordination Agreement" means that certain Amended and Restated Subordination and Intercreditor Agreement dated as of December 6, 2016 by and among Prepetition Agent, Subordinated Lenders and Prepetition Borrowers, as amended, supplemented, restated or otherwise modified from time to time as permitted hereunder and under the Subordination Agreement.

"Subsidiary" means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to "Subsidiary" or "Subsidiaries" herein shall refer to those of the Borrowers.

"Substantial Portion" means, with respect to the Property of Borrowers, Property which represents more than 10% of the consolidated assets of Borrowers or property which is

responsible for more than 10% of the consolidated net sales or of the Consolidated Net Income of the Borrowers and their Subsidiaries, in each case, as would be shown in the financial statements of the Borrowers and their Subsidiaries as at the beginning of the 12 month period ending with the month in which such determination is made (or if the financial statements have not been delivered hereunder for that month which begins the 12 month period, then the financial statements delivered hereunder for the quarter ending immediately prior to that month).

"Superpriority Claims" has the meaning assigned thereto in Section 7.18(b).

"Swap Obligation" means, with respect to any guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Sweep Arrangement" has the meaning assigned thereto in Section 2.2(a).

"Swingline Commitment" means the lesser of (a) \$5,000,000 and (b) the Revolving Credit Commitment.

"Swingline Facility" means the swingline facility established pursuant to Section 2.2.

"Swingline Lender" means Wells Fargo in its capacity as swingline lender hereunder or any successor thereto.

"Swingline Loan" means any swingline loan made by the Swingline Lender to the Borrowers pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

"Swingline Note" means a promissory note made by the Borrowers in favor of the Swingline Lender evidencing the Swingline Loans made by the Swingline Lender, substantially in the form attached as *Exhibit A-2*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Synthetic Lease" means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

"Term Loan Commitment" means (a) as to any Term Loan Lender, the obligation of such Term Loan Lender to make (or deem to make) a portion of the Initial Term Loan to the account of the Borrowers hereunder on the Term Loan Funding Date (in the case of the Initial Term Loan) in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name on the Register/Schedule 1.1(b) (as of the Closing Date), as such amount may be increased, reduced or otherwise modified at any time or from time to time pursuant to the terms

hereof and (b) as to all Term Loan Lenders, the aggregate commitment of all Term Loan Lenders to make (or deem to make) such Term Loans. The aggregate Term Loan Commitment with respect to the Initial Term Loan of all Term Loan Lenders on the Closing Date shall be \$26,900,000, as increased by all interest, fees, costs and other charges accrued and accruing with respect to the Prepetition Term Obligations (other than adequate protection in the form of cash payments paid to the Prepetition Lenders in respect of the Prepetition Term Loans).

"Term Loan Facility" means the term loan facility established pursuant to Article IV.

"Term Loan Lender" means any Lender with a Term Loan Commitment and/or outstanding Term Loans.

"Term Loan Maturity Date" means the earliest to occur of (a) May 31, 2018, (b) written notice from Administrative Agent to Debtors of the occurrence of an Event of Default and of the "Termination Date" as defined in the Financing Order, and (c) the closing date of a Sale or any other sale of substantially all of the Debtors' assets.

"Term Loan Note" means a promissory note made by the Borrowers in favor of a Term Loan Lender evidencing the portion of the Term Loans made by such Term Loan Lender, substantially in the form attached as *Exhibit A-3*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

"Term Loan Percentage" means, with respect to any Term Loan Lender at any time, the percentage of the total outstanding principal balance of the Term Loans represented by the outstanding principal balance of such Term Loan Lender's Term Loans. The Term Loan Percentage of each Term Loan Lender as of the Closing Date is set forth opposite the name of such Term Loan Lender on Schedule 1.1(b).

"Term Loans" means the Initial Term Loans and "Term Loan" means any such Term Loans.

"Termination Event" means the occurrence of any of the following which, individually or in the aggregate, has resulted or could reasonably be expected to result in liability of the Borrowers in an aggregate amount in excess of \$750,000: (a) a "Reportable Event" described in Section 4043 of ERISA for which the thirty (30) day notice requirement has not been waived by the PBGC, or (b) the withdrawal of any Borrower or any ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303 of ERISA, or (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or plan in endangered or critical status with the meaning of Sections

430, 431 or 432 of the Code or Sections 303, 304 or 305 of ERISA or (h) the partial or complete withdrawal of any Borrower or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or (i) any event or condition which results in the insolvency of a Multiemployer Plan under Section 4245 of ERISA, or (j) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA, or (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate.

"Total Credit Exposure" means, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure and outstanding Term Loans of such Lender at such time.

"Transactions" means, collectively, (a) the commencement of the Cases and (b) the initial Extensions of Credit.

"UCC" means the Uniform Commercial Code as in effect in the State of Illinois.

"Uniform Customs" means the Uniform Customs and Practice for Documentary Credits (2007 Revision), effective July, 2007 International Chamber of Commerce Publication No. 600.

"United States" means the United States of America.

"U.S. Borrower" means any Borrower that is a U.S. Person.

"U.S. Person" means any Person that is a "United States person" as defined in Section 7701(a)(30) of the Code.

"U.S. Tax Compliance Certificate" has the meaning assigned thereto in Section 5.11(g).

"Variance Budget" means the budget initially delivered on the Closing Date (a copy of which is attached as Exhibit BB-3), in form and substance satisfactory to Administrative Agent and Required Lenders, prepared by the Borrowers' chief financial officer together with Borrowers' management (including members of management serving in such capacity in connection with the Keystone Engagement Agreement), and reviewed and approved by the Chief Restructuring Officer, projecting the operations of Borrowers for the following thirteen-week period and including, without limitation, a cash flow forecast that includes, without limitation, the Projected Information. A budget for the immediately succeeding thirteen-week period (and each thirteen-week period thereafter) shall be delivered by Borrowers (in substantially the same format as the budget previously delivered for the prior thirteen-week period) no later than [\_\_\_\_], 2018 (and thereafter on the last Business Day of the tenth week of the then current thirteen-week period), in each case, in form and substance satisfactory to Administrative Agent and Required Lenders, prepared by the Borrowers' chief financial officer together with Borrowers' management (including members of management serving in such capacity in connection with the Keystone Engagement Agreement), and reviewed and approved by the Chief Restructuring Officer and submitted to Administrative Agent in accordance with Section 8.1, and, upon acceptance in writing by Administrative Agent (after approval by the Required Lenders is obtained by the Administrative Agent), such budget for the immediately succeeding thirteen-week period shall supplement the prior budget and then constitute the Variance Budget.



Any amendment, supplement, or other modification to any Variance Budget shall be in form and substance satisfactory to Administrative Agent and Required Lenders.

"Variance Report" means a detailed weekly variance report, in form and substance satisfactory to Administrative Agent, prepared by the Borrowers' chief financial officer and Borrowers' management (including members of management serving in such capacity in connection with the Keystone Engagement Agreement), and reviewed and approved by the Chief Restructuring Officer, provided to Administrative Agent in accordance with Section 8.1, that (i)(x) reconciles Borrowers' actual performance for the week ended the preceding Friday with Borrowers' projected performance for such week pursuant to the thirteen-week cash flow forecast under the Variance Budget and (y) reconciles Borrowers' actual performance, on a cumulative basis, for the period commencing on the Closing Date and ended the preceding Friday with Borrowers' projected performance for such period pursuant to the thirteen-week cash flow forecast under the Variance Budget, which report shall include, without limitation, a detailed calculation of the variances (detailed by dollar amounts and percentages) between Borrowers' actual and projected disbursements, collections, and other Projected Information, and (ii) includes a report prepared by the Borrowers' chief financial officer and Borrowers' management (including members of management serving in such capacity in connection with the Keystone Engagement Agreement), and reviewed and approved by the Chief Restructuring Officer, setting forth detailed explanations for variances in actual results as compared to forecasted performance for such week under the Variance Budget, including, without limitation, an explanation for any variance and non-compliance with the requirements set forth in Section 9.17.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"Wholly-Owned" means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by the Borrowers and/or one or more of their Wholly-Owned Subsidiaries (except for directors' qualifying shares or other shares required by Applicable Law to be owned by a Person other than the Borrowers and/or one or more of their Wholly-Owned Subsidiaries).

"Withholding Agent" means any Borrower and the Administrative Agent.

SECTION 1.2 Other Definitions and Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (d) the word "will" shall be construed to have the same meaning and effect as the word "shall", (e) any reference herein to any Person shall be construed to include such Person's successors and assigns, (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words "asset"

and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (i) the term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and (j) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including".

### SECTION 1.3 Accounting Terms.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 8.1(a), except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrowers and their Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

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

SECTION 1.4 UCC Terms. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

SECTION 1.5 Rounding. Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.6 [Reserved].

SECTION 1.7 [Reserved].

SECTION 1.8 [Reserved].

SECTION 1.9 References to Agreement and Laws. Unless otherwise expressly provided herein, (a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including, without limitation, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the PATRIOT Act, the Securities Act of 1933, the UCC, the Investment Company Act of 1940, the Interstate Commerce Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

SECTION 1.10 Times of Day. Unless otherwise specified, all references herein or any other Loan Document to times of day shall be references to Central time (daylight or standard, as applicable). Unless otherwise specified, any reference herein to any date on which an item is required to be delivered to Administrative Agent or Lenders shall be deemed to include a requirement to deliver such item by 2:00 p.m. Central time on such date.

SECTION 1.11 Letter of Credit Amounts, Assumption, and Reissuance. Upon entry of the Final Order, all outstanding "L/C Obligations" under the Prepetition Credit Agreement shall be deemed assumed by the Debtors, reissued under this Agreement, and shall constitute "L/C Obligations" (as defined herein) arising on the date hereof. For the avoidance of doubt, upon entry of the Final Order, "L/C Obligations" under the Prepetition Credit Agreement shall be deemed repaid in full and no longer outstanding. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Application and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

SECTION 1.12 Covenant Compliance Generally. For purposes of determining compliance under Sections 9.1, 9.2, 9.3, 9.5 and 9.6, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating Consolidated Net Income in the most recent annual financial statements of the Borrowers and their Subsidiaries delivered pursuant to Section 8.1(a). Notwithstanding the foregoing, for purposes of determining compliance with Sections 9.1, 9.2 and 9.3, with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no breach of any basket contained in such sections shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided that for

the avoidance of doubt, the foregoing provisions of this Section 1.12 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

## ARTICLE II

### REVOLVING CREDIT FACILITY

#### SECTION 2.1 Revolving Credit Loans.

(a) Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Revolving Credit Lender severally agrees to make Revolving Credit Loans to the Borrowers from time to time from the Closing Date through, but not including, the Revolving Credit Maturity Date in an amount at any one time outstanding not to exceed the lesser of:

(i) such Lender's Revolving Credit Commitment, or

(ii) such Lender's Revolving Credit Commitment Percentage of an amount equal to the lesser of:

(A) the amount equal to (1) the aggregate Revolving Credit Commitment less (2) the sum of (v) the aggregate amount of L/C Obligations outstanding as of such time plus (w) the principal amount of Swingline Loans as of such time, plus (x) the aggregate amount of the Prepetition Revolving Obligations, plus (y) the aggregate amount of Reserves, if any, established by Administrative Agent against the Revolving Credit Commitment in its Permitted Discretion from time to time, and

(B) the amount equal to (1) the Borrowing Base as of such date (based upon the most recent Borrowing Base Certificate delivered by Borrowers to Administrative Agent) less (2) the sum of (v) the aggregate amount of L/C Obligations outstanding as of such time plus (w) the principal amount of Swingline Loans as of such time, plus the aggregate amount of the Prepetition Revolving Credit Outstandings,

provided, that, notwithstanding the foregoing, (x) the aggregate principal amount of the Revolving Credit Loans at any time outstanding during any week shall not exceed the amount set forth in the line item entitled "Ending DIP Revolving Facility" in the Variance Budget for (1) such week, if the amount set forth in such line item for the week immediately preceding such week is equal to or less than the amount set forth in such line item for such week or (2) the week immediately preceding such week, if the amount set forth in such line item for the week immediately preceding such week is greater than the amount set forth in such line item for such week, and (y) the aggregate principal amount of the Revolving Credit Loans outstanding as of the close of business on the last Business Day of each week shall not exceed the amount set forth in the line item entitled "Ending DIP Revolving Facility" in the Variance Budget for such week;

provided further, that the foregoing limitations are subject to the obligations of the Lenders in respect of the Carveout pursuant and subject to the terms of the Financing Order..

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Revolving Credit Loans, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Revolving Credit Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Administrative Agent shall have the right (but not the obligation) at any time and from time to time, in the exercise of its Permitted Discretion, to (i) establish or decrease Reserves against the Borrowing Base or the Revolving Credit Commitments and (ii) increase or decrease the advance rates set forth in the definition of Borrowing Base (provided that no increase to the advance rates may be increased in excess of the advance rates in effect on the Closing Date without the consent of Required Revolving Credit Lenders).

(d) Within one (1) Business Day of entry of the Final Order, Borrowers and each Revolving Credit Lender hereby authorize Administrative Agent to make (or deem to make) Roll-up Revolving Credit Loans on behalf of Revolving Credit Lenders, in an amount equal to the then outstanding Prepetition Revolving Obligations.

#### SECTION 2.2 Swingline Loans.

(a) Availability. Subject to the terms and conditions of this Agreement and the other Loan Documents, including, without limitation, Section 6.2(e) of this Agreement, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, the Swingline Lender may, in its sole discretion, make Swingline Loans to the Borrowers from time to time from the Closing Date through, but not including, the Revolving Credit Maturity Date; provided, that (a) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (b) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested) shall not exceed the Swingline Commitment. Notwithstanding any provision herein to the contrary, the Swingline Lender and the Borrowers may agree that the Swingline Facility may be used to automatically draw and repay Swingline Loans (subject to the limitations set forth herein) pursuant to cash management arrangements among the Borrowers and the Swingline Lender (the "Sweep Arrangement"). Principal and interest on Swingline Loans deemed requested pursuant to the Sweep Arrangement shall be paid pursuant to the terms and conditions agreed to among the Borrowers and the Swingline Lender (without any deduction, setoff or counterclaim whatsoever). The borrowing and disbursement provisions set forth in Section 2.3 and any other provision hereof with respect to the timing or amount of payments on the Swingline Loans (other than Section 2.4(a)) shall not be applicable to Swingline Loans made and prepaid pursuant to the Sweep Arrangement. Unless sooner paid pursuant to the provisions hereof or the provisions of the Sweep Arrangement, the principal amount of the Swingline Loans shall be Paid In Full, together with accrued interest thereon, on the Revolving Credit Maturity Date.

(b) Refunding.

(i) Swingline Loans shall be refunded by the Revolving Credit Lenders on demand by the Swingline Lender. Such refundings shall be made by the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages and shall thereafter be reflected as Revolving Credit Loans of the Revolving Credit Lenders on the books and records of the Administrative Agent. Each Revolving Credit Lender shall fund its respective Revolving Credit Commitment Percentage of Revolving Credit Loans as required to repay Swingline Loans outstanding to the Swingline Lender upon demand by the Swingline Lender but in no event later than 1:00 p.m. on the next succeeding Business Day after such demand is made. No Revolving Credit Lender's obligation to fund its respective Revolving Credit Commitment Percentage of a Swingline Loan shall be affected by any other Revolving Credit Lender's failure to fund its Revolving Credit Commitment Percentage of a Swingline Loan, nor shall any Revolving Credit Lender's Revolving Credit Commitment Percentage be increased as a result of any such failure of any other Revolving Credit Lender to fund its Revolving Credit Commitment Percentage of a Swingline Loan.

(ii) The Borrowers shall pay to the Swingline Lender on demand the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrowers hereby authorize the Administrative Agent to charge any account maintained by the Borrowers with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrowers from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages (unless the amounts so recovered by or on behalf of the Borrowers pertain to a Swingline Loan extended after the occurrence and during the continuance of an Event of Default of which the Administrative Agent has received notice in the manner required pursuant to Section 11.3 and which such Event of Default has not been waived by the Required Lenders or the Lenders, as applicable).

(iii) Each Revolving Credit Lender acknowledges and agrees that its obligation to refund Swingline Loans in accordance with the terms of this Section is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Article VI. Further, each Revolving Credit Lender agrees and acknowledges that if prior to the refunding of any outstanding Swingline Loans pursuant to this Section, a Revolving Credit Loan cannot be made for any reason, each Revolving Credit Lender will, on the date the applicable Revolving Credit Loan would have been made, purchase an undivided participating interest in the Swingline Loan to be refunded in an amount equal to its Revolving Credit Commitment Percentage of the aggregate amount of such Swingline Loan. Each Revolving Credit Lender will immediately transfer to the Swingline Lender, in Same Day

Funds, the amount of its participation and upon receipt thereof the Swingline Lender will deliver to such Revolving Credit Lender a certificate evidencing such participation dated the date of receipt of such funds and for such amount. Whenever, at any time after the Swingline Lender has received from any Revolving Credit Lender such Revolving Credit Lender's participating interest in a Swingline Loan, the Swingline Lender receives any payment on account thereof, the Swingline Lender will distribute to such Revolving Credit Lender its participating interest in such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's participating interest was outstanding and funded).

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans.

(a) Requests for Borrowing. The Borrowers shall give the Administrative Agent irrevocable prior written notice substantially in the form of *Exhibit B* (a "Notice of Borrowing") not later than 1:00 p.m. the same Business Day as each Base Rate Loan and each Swingline Loan; provided that Borrowers are only permitted to send a Notice of Borrowing to Administrative Agent to the extent the requested Revolving Credit Loans are required to pay, when due, those expenses in accordance with the Variance Budget. Each intention to borrow shall specify (A) the date of such borrowing, which shall be a Business Day, (B) the amount of such borrowing, which shall be, (x) with respect to Base Rate Loans (other than Swingline Loans) in an aggregate principal amount of \$200,000 or a whole multiple of \$25,000 in excess thereof, and (y) with respect to Swingline Loans in an aggregate principal amount of \$100,000 or a whole multiple of \$10,000 in excess thereof, and (C) whether such Loan is to be a Revolving Credit Loan or Swingline Loan. A Notice of Borrowing received after 1:00 p.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the Revolving Credit Lenders of each Notice of Borrowing. Notwithstanding anything to the contrary in this Agreement, a Notice of Borrowing will be deemed to have been submitted for a Revolving Credit Loan within one (1) Business Day of entry of the Final Order in an amount equal to the outstanding Prepetition Revolving Obligations as of such date, which proceeds of such Revolving Credit Loan will be applied (or deemed applied) to repay such Prepetition Revolving Obligations.

(b) Disbursement of Revolving Credit and Swingline Loans. Not later than 1:00 p.m. on the proposed borrowing date, (i) each Revolving Credit Lender will make available to the Administrative Agent, for the account of the Borrowers, at the office of the Administrative Agent in Same Day Funds to the Administrative Agent, such Revolving Credit Lender's Revolving Credit Commitment Percentage of the Revolving Credit Loans to be made on such borrowing date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrowers, at the office of the Administrative Agent in Same Day Funds to the Administrative Agent, the Swingline Loans to be made on such borrowing date. The Borrowers hereby irrevocably authorize the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section in Same Day Funds by crediting or wiring such

proceeds to the deposit account of the Borrowers identified in the most recent notice substantially in the form attached as ***Exhibit C*** (a "Notice of Account Designation") delivered by the Borrowers to the Administrative Agent or as may be otherwise agreed upon by the Borrowers and the Administrative Agent from time to time. Subject to Section 5.7 hereof, the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Loan requested pursuant to this Section to the extent that any Revolving Credit Lender has not made available to the Administrative Agent its Revolving Credit Commitment Percentage of such Loan. Revolving Credit Loans to be made for the purpose of refunding Swingline Loans shall be made by the Revolving Credit Lenders as provided in Section 2.2(b). Notwithstanding anything to the contrary contained in the Credit Agreement or the other Loan Documents, all disbursements of Revolving Credit Loans and Swingline Loans and all repayments of the Obligations will be denominated in Dollars and may not be denominated in any other currency.

SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.

(a) Repayment on Termination Date. The Borrowers hereby agree to repay the outstanding principal amount of (i) all Revolving Credit Loans in full on the Revolving Credit Maturity Date, and (ii) all Swingline Loans in accordance with Section 2.2(b) (but, in any event, no later than the Revolving Credit Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) Mandatory Prepayments – Excess Revolving Credit Outstandings. If (x) at any time the Revolving Credit Outstandings exceed the least of (i) the Revolving Credit Commitment (less any Reserves taken with respect thereto), (ii) the sum of (A) the Borrowing Base reflected on the Borrowing Base Certificate most recently delivered by Borrowers to Administrative Agent, plus (B) the Prepetition Revolving Credit Outstandings at such time, or (iii) except as described in the first proviso at the end of the last sentence of Section 2.1(a), when aggregated with the Revolving Credit Outstandings for such week (other than outstanding L/C Obligations), the projected outstanding principal amount of Revolving Credit Loans set forth in the line item entitled "Ending DIP Revolving Facility" in the Variance Budget for (1) such week, if the amount set forth in such line item for the week immediately preceding such week is equal to or less than the amount set forth in such line item for such week or (2) the week immediately preceding such week, if the amount set forth in such line item for the week immediately preceding such week is greater than the amount set forth in such line item for such week or (y) as of the close of business on the last Business Day of each week, the Revolving Credit Outstandings (other than outstanding L/C Obligations) exceeds the projected outstanding principal amount of Revolving Credit Loans set forth in the line item entitled "Ending DIP Revolving Facility" in the Variance Budget for such week, Borrowers agree to immediately repay to the Administrative Agent for the account of the Revolving Credit Lenders, without notice or request, an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to the remainder of such excess (such Cash Collateral to be applied in accordance with Section 10.2(b)).



(c) Mandatory Prepayments - Collections. During the term of this Agreement, all collected funds on deposit in any Collection Account, or in any other deposit account or securities account subject to a Control Agreement, shall be transferred by the applicable bank or securities intermediary at which any such Collection Accounts, deposit accounts or securities accounts are located, as applicable, on each Business Day to an account designated by the Administrative Agent (the "Designated Account"). Subject to the Financing Order and Section 2.7 hereof, upon entry of the Final Order, all funds received in the Designated Account pursuant to this Section 2.4(c) shall be applied by the Administrative Agent on each Business Day to reduce the Obligations, with each such repayment applied first to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans, third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to the remainder of such excess (such Cash Collateral to be applied in accordance with Section 10.2(b)), fourth to the Term Loan in the inverse order of maturity, and fifth to all other Obligations owing hereunder, unless Section 10.4 is applicable, in which case such amounts shall be applied as provided therein.

(d) Hedge Agreements. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrowers' obligations under any Hedge Agreement entered into with respect to the Loans.

SECTION 2.5 [Reserved].

SECTION 2.6 Termination of Revolving Credit Facility. The Revolving Credit Facility and the Revolving Credit Commitments shall terminate on the Revolving Credit Maturity Date.

SECTION 2.7 Application of Payments. From and after the Filing Date and until entry of the Final Order, all cash collateral coming into the possession or control of the Debtors shall be applied to reduce the Prepetition Revolving Obligations. Upon entry of the Final Order, a Revolving Credit Loan (which shall be made without giving effect to the proviso set forth in Section 2.1(a) of this Agreement) shall be used to repay in full all of the Prepetition Revolving Obligations then outstanding and a Term Loan shall be used to repay in full all of the Prepetition Term Obligations, other than the Specified Prepetition Obligations described in subclause (i) of such definition. As between the Prepetition Secured Obligations and the Secured Obligations, applications shall be made as follows (subject to the right of Administrative Agent to reconcile payments to the Prepetition Obligations and the Prepetition Hedge Obligations in accordance with the terms of the Prepetition Credit Agreement): (i) first, to repay the Prepetition Secured Obligations until all of the Prepetition Secured Obligations have been Paid In Full, other than the Specified Prepetition Obligations; (ii) second, to repay all of the Secured Obligations in accordance with Sections 2.4(c), 4.4(b)(vi) or 10.4 hereof, as applicable until all of the Secured Obligations have been Paid In Full; and (iii) third, to repay the Specified Prepetition Obligations until the Specified Prepetition Obligations have been Paid In Full.

## ARTICLE III

### LETTER OF CREDIT FACILITY

#### SECTION 3.1 L/C Facility.

(a) Availability. Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby Letters of Credit in an aggregate amount not to exceed its L/C Commitment for the account of the Borrowers or, subject to Section 3.10, any Subsidiary thereof, Letters of Credit may be issued on any Business Day from the Closing Date through but not including the thirtieth (30th) Business Day prior to the Revolving Credit Maturity Date in such form as may be approved from time to time by the applicable Issuing Lender; provided, that no Issuing Lender shall issue any Letter of Credit if (x) after giving effect to such issuance, (a) the sum of the L/C Obligations and Prepetition L/C Obligations would exceed the L/C Sublimit, (b) the Revolving Credit Outstandings would exceed the Revolving Credit Commitment (less any Reserves taken in respect thereof), or (c) the Revolving Credit Outstandings would exceed the Borrowing Base or (y) Required Lenders have not consented to such issuance.

(b) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 3.2 Procedure for Issuance of Letters of Credit. The Borrowers may from time to time request that any Issuing Lender issue a Letter of Credit by delivering to such Issuing Lender at its applicable office (with a copy to the Administrative Agent at the Administrative Agent's Office) a Letter of Credit Application therefor, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender or the Administrative Agent may request. Upon receipt of any Letter of Credit Application, the applicable Issuing Lender shall, process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article VI, promptly issue the Letter of Credit requested thereby (but in no event shall such Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by such Issuing Lender and the Borrowers. The applicable Issuing Lender shall promptly furnish to the Borrowers and the Administrative Agent a copy of such Letter of Credit and the Administrative Agent shall promptly notify each Revolving Credit Lender of the issuance and upon request by any Lender, furnish to such Revolving Credit Lender a copy of such Letter of Credit and the amount of such Revolving Credit Lender's participation therein.

#### SECTION 3.3 Commissions and Other Charges.

(a) Letter of Credit Commissions. Subject to Section 5.15(a)(iii)(B), the Borrowers shall pay to the Administrative Agent, for the account of the applicable Issuing Lender and the

L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such standby Letters of Credit times 6.25% (determined, in each case, on a per annum basis). Such commission shall be payable monthly in arrears on the last Business Day of each calendar month, on the Revolving Credit Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the applicable Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Revolving Credit Commitment Percentages.

(b) Issuance Fee. In addition to the foregoing commission, the Borrowers shall pay directly to the applicable Issuing Lender, for its own account, an issuance fee with respect to each Letter of Credit issued by such Issuing Lender as set forth in any fee letter executed by such Issuing Lender. Such issuance fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Credit Maturity Date and thereafter on demand of the applicable Issuing Lender.

(c) Other Fees, Costs, Charges and Expenses. In addition to the foregoing fees and commissions, the Borrowers shall pay or reimburse each Issuing Lender for such normal and customary fees, costs, charges and expenses as are incurred or charged by such Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit issued by it.

#### SECTION 3.4 L/C Participations.

(a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce each Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Credit Commitment Percentage in each Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued by it hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit issued by such Issuing Lender for which such Issuing Lender is not reimbursed in full by the Borrowers through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(b) Upon becoming aware of any amount required to be paid by any L/C Participant to any Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit, issued by it, such Issuing Lender shall notify the Administrative Agent of such unreimbursed amount and the Administrative Agent shall notify each L/C Participant (with a copy to the applicable Issuing Lender) of the amount and due date of such required payment and such L/C Participant shall pay to the Administrative Agent (which, in turn shall pay such Issuing Lender) the amount specified

on the applicable due date. If any such amount is paid to such Issuing Lender after the date such payment is due, such L/C Participant shall pay to such Issuing Lender on demand, in addition to such amount, the product of (i) such amount, times (ii) the daily average Federal Funds Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. A certificate of such Issuing Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error. With respect to payment to such Issuing Lender of the unreimbursed amounts described in this Section, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(c) Whenever, at any time after any Issuing Lender has made payment under any Letter of Credit issued by it and has received from any L/C Participant its Revolving Credit Commitment Percentage of such payment in accordance with this Section, such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrowers or otherwise), or any payment of interest on account thereof, such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to such Issuing Lender the portion thereof previously distributed by such Issuing Lender to it.

SECTION 3.5 Reimbursement Obligation of the Borrowers. In the event of any drawing under any Letter of Credit, the Borrowers agree to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section or with funds from other sources), in same day funds, the applicable Issuing Lender on each date on which such Issuing Lender notifies the Borrowers of the date and amount of a draft paid by it under any Letter of Credit for the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment. Unless the Borrowers shall immediately notify such Issuing Lender that the Borrowers intend to reimburse such Issuing Lender for such drawing from other sources or funds, the Borrowers shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Revolving Credit Lenders make a Revolving Credit Loan bearing interest at the Base Rate on the applicable repayment date in the amount of (i) such draft so paid and (ii) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment, and the Revolving Credit Lenders shall make a Revolving Credit Loan bearing interest at the Base Rate in such amount, the proceeds of which shall be applied to reimburse such Issuing Lender for the amount of the related drawing and such fees and expenses. Each Revolving Credit Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section to reimburse such Issuing Lender for any draft paid under a Letter of Credit issued by it is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 2.3(a) or Article VI. If the Borrowers have elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse such Issuing Lender as provided above, the unreimbursed amount of such drawing shall bear interest at the rate which would be payable on any outstanding Base Rate

Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full.

SECTION 3.6 Obligations Absolute. The Borrowers' obligations under this Article III (including, without limitation, the Reimbursement Obligation) shall be absolute and unconditional under any and all circumstances and irrespective of any set off, counterclaim or defense to payment which the Borrowers may have or have had against the applicable Issuing Lender or any beneficiary of a Letter of Credit or any other Person. The Borrowers also agree that the applicable Issuing Lender and the L/C Participants shall not be responsible for, and the Borrowers' Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrowers and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrowers against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit issued by it, except for errors or omissions caused by such Issuing Lender's gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final nonappealable judgment. The Borrowers agree that any action taken or omitted by any Issuing Lender under or in connection with any Letter of Credit issued by it or the related drafts or documents, if done in the absence of gross negligence or willful misconduct shall be binding on the Borrowers and shall not result in any liability of such Issuing Lender or any L/C Participant to the Borrowers. The responsibility of any Issuing Lender to the Borrowers in connection with any draft presented for payment under any Letter of Credit issued to it shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment substantially conforms to the requirements under such Letter of Credit.

SECTION 3.7 Effect of Letter of Credit Application. To the extent that any provision of any Letter of Credit Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

SECTION 3.8 Resignation of Issuing Lenders.

(a) Any Lender may at any time resign from its role as an Issuing Lender hereunder upon not less than thirty (30) days prior notice to the Borrowers and the Administrative Agent (or such shorter period of time as may be acceptable to the Borrowers and the Administrative Agent).

(b) Any resigning Issuing Lender shall retain all the rights, powers, privileges and duties of an Issuing Lender hereunder with respect to all Letters of Credit issued by it that are outstanding as of the effective date of its resignation as an Issuing Lender and all L/C Obligations with respect thereto (including, without limitation, the right to require the Revolving Credit Lenders to take such actions as are required under Section 3.4). Without limiting the foregoing, upon the resignation of a Lender as an Issuing Lender hereunder, the Borrowers may, or at the request of such resigned Issuing Lender the Borrowers shall, use commercially

reasonable efforts to, arrange for one or more of the other Issuing Lenders to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such resigned Issuing Lender and outstanding at the time of such resignation, or make other arrangements satisfactory to the resigned Issuing Lender to effectively cause another Issuing Lender to assume the obligations of the resigned Issuing Lender with respect to any such Letters of Credit.

**SECTION 3.9 Reporting of Letter of Credit Information and L/C Commitment.** At any time that there is an Issuing Lender that is not also the financial institution acting as Administrative Agent, then (a) on the last Business Day of each calendar month, (b) on each date that a Letter of Credit is amended, terminated or otherwise expires, (c) on each date that a Letter of Credit is issued or the expiry date of a Letter of Credit is extended, and (d) upon the request of the Administrative Agent, each Issuing Lender (or, in the case of clauses (b), (c) or (d) of this Section, the applicable Issuing Lender) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information (including, without limitation, any reimbursement, Cash Collateral, or termination in respect of Letters of Credit issued by such Issuing Lender) with respect to each Letter of Credit issued by such Issuing Lender that is outstanding hereunder. In addition, each Issuing Lender shall provide notice to the Administrative Agent of its L/C Commitment, or any change thereto, promptly upon it becoming an Issuing Lender or making any change to its L/C Commitment. No failure on the part of any L/C Issuer to provide such information pursuant to this Section 3.9 shall limit the obligations of the Borrowers or any Revolving Credit Lender hereunder with respect to its reimbursement and participation obligations hereunder.

**SECTION 3.10 Letters of Credit Issued for Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrowers shall be obligated to reimburse, or to cause the applicable Subsidiary to reimburse, the applicable Issuing Lender hereunder for any and all drawings under such Letter of Credit. The Borrowers hereby acknowledge that the issuance of Letters of Credit for the account of any of their Subsidiaries inures to the benefit of the Borrowers and that the Borrowers' businesses derive substantial benefits from the businesses of such Subsidiaries.

**SECTION 3.11 Existing Letters of Credit.** Upon entry of the Final Order, all Existing Letters of Credit shall be deemed to have been issued pursuant hereto and obligations with respect thereto assumed by the Borrowers hereunder, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof. Each Issuing Lender hereby assumes and agrees to perform any and all duties, obligations and liabilities to be performed or discharged by the issuers of the Existing Letters of Credit, and any Prepetition Obligations in respect of the Existing Letters of Credit shall be deemed to be refinanced hereby. For the avoidance of doubt, upon entry of the Final Order, any letter of credit under the Prepetition Credit Agreement shall be deemed repaid in full and no longer outstanding. Borrowers agree to execute and deliver such documentation, if any, requested by Administrative Agent, or an Issuing Lender to evidence, record, or further the foregoing deemed assumption, re-issuance and refinance.

## ARTICLE IV

### TERM LOAN FACILITY

SECTION 4.1 Term Loan. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Term Loan Lender severally agrees to make the Initial Term Loan to the Borrowers in a principal amount up to such Lender's Term Loan Commitment as of the Closing Date, which Initial Term Loan shall be made on the first Business Day following entry of the Final Order (the "Term Loan Funding Date"), in order to refinance the Prepetition Term Obligations in full, other than the Specified Prepetition Obligations described in subclause (i) of such definition. Notwithstanding the foregoing, if the total Term Loan Commitment as of the Closing Date is not drawn on the Term Loan Funding Date, any undrawn amount shall automatically be cancelled.

SECTION 4.2 Procedure for Advance of Term Loan.

(a) Initial Term Loan. The Borrowers shall be deemed to have given the Administrative Agent an irrevocable Notice of Borrowing prior to 1:00 p.m. on the Term Loan Funding Date requesting that the Term Loan Lenders make the Initial Term Loan as a Base Rate Loan on such date.

(b) [Reserved].

SECTION 4.3 Repayment of Term Loans. If not sooner paid, the Initial Term Loan shall be Paid In Full, together with accrued interest thereon, on the Term Loan Maturity Date.

SECTION 4.4 Prepayments of Term Loans and Certain Revolving Credit Loans.

(a) Optional Prepayments. The Borrowers shall have no right at any time to voluntarily or optionally prepay the Term Loans, in whole or in part.

(b) Mandatory Prepayments.

(i) Indebtedness Issuances. The Borrowers shall make mandatory principal prepayments of the Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (vi) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Indebtedness Issuance not otherwise permitted pursuant to Section 9.1. Such prepayment shall be made within one (1) Business Day after the date of receipt of the Net Cash Proceeds of any such Indebtedness Issuance.

(ii) Equity Issuances. The Borrowers shall make mandatory principal prepayments of the Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (vi) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Equity Issuance other than the exercise price on stock options issued as part of employee compensation. Such prepayment shall be made within one (1) Business Day after the date of receipt of the Net Cash Proceeds of any such Equity Issuance.

(iii) Asset Dispositions. The Borrowers shall make mandatory principal prepayments of the Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (vi) below in amounts equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Asset Disposition (other than any Asset Disposition permitted pursuant to, and in accordance with, clauses (a) through (d) of Section 9.5). Such prepayments shall be made within one (1) Business Day after the date of receipt of the Net Cash Proceeds of any such Asset Disposition by any Borrower or any of its Subsidiaries.

(iv) Insurance and Condemnation Events. The Borrowers shall make mandatory principal prepayments of the Loans and/or Cash Collateralize the L/C Obligations in the manner set forth in clause (vi) below in an amount equal to one hundred percent (100%) of the aggregate Net Cash Proceeds from any Insurance and Condemnation Event. Such prepayments shall be made within one (1) Business Day after the date of receipt of Net Cash Proceeds of any such Insurance and Condemnation Event by such Borrowers or such Subsidiaries.

(v) [Reserved].

(vi) Notice; Manner of Payment. Upon the occurrence of any event triggering the prepayment requirement under clauses (i) through and including (iv) above, the Borrowers shall promptly (but in all events within one (1) Business Day thereof) deliver an irrevocable prior written notice to the Administrative Agent substantially in the form attached as Exhibit D (a "Notice of Prepayment") and upon receipt of such notice, the Administrative Agent shall promptly so notify the Lenders. From and after the earlier of (x) entry of the Final Order and (y) Payment in Full of the Prepetition Secured Obligations (other than the Specified Prepetition Obligations), each prepayment of the Loans under clauses (i) through and including (iv) above shall be applied as follows: (a) first, to repay the Revolving Credit Loans to the extent required under Section 2.4(b), which repayment shall permanently reduce the Revolving Credit Commitments on a dollar-for-dollar basis; (b) second, to the extent of any excess, to repay the Revolving Credit Loans and permanently reduce the Revolving Credit Commitments and Permitted Overadvance, in each case, on a dollar-for-dollar basis, up to the amount of the Permitted Overadvance then in effect; (c) third, to the extent of any excess, to the Term Loan, in the inverse order of maturity and (d) fourth, to the extent of any excess, to repay the Revolving Credit Loans (without a permanent reduction of the Revolving Credit Commitment); provided, however, if the amount of any prepayment is to be applied pursuant to subclauses (a) or (b) of this Section 4.4(b)(vi), Borrowers will deliver a revised Variance Budget and Budget to Administrative Agent together with the Notice of Prepayment, and the existing Variance Budget and Budget will automatically be deemed to be modified and updated upon the due date of such prepayment by such amount, to reflect a permanent dollar-for-dollar reduction in the amount of the permanent reductions in the Revolving Credit Commitments for such Variance Budget and Budget, and each and every Variance Budget and Budget period after such prepayment.

(vii) No Reborrowings. Amounts prepaid under the Term Loan pursuant to this Section may not be reborrowed.



## ARTICLE V

### GENERAL LOAN PROVISIONS Interest.

(a) Interest Rate. Subject to the provisions of this Section, Revolving Credit Loans, Swingline Loans and the Term Loans shall bear interest at the Base Rate plus the Applicable Margin.

(b) Default Rate. Subject to Section 10.3, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 10.1(a) or (b), or (ii) at the election of the Required Lenders, upon the occurrence and during the continuance of any other Event of Default, (A) the Administrative Agent shall no longer have the obligation to make Swingline Loans, (B) all outstanding Base Rate Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum equal to four percent (4%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans or such other Obligations arising hereunder or under any other Loan Document and (C) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations during the filing by or against any Borrower of the Cases, or any other petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(c) Interest Payment and Computation. Interest on each Base Rate Loan shall be due and payable in arrears on the last Business Day of each calendar month. All computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year).

(d) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Borrowers any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations. It is the intent hereof that the Borrowers not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrowers under Applicable Law.

SECTION 5.2 [Reserved].

SECTION 5.3 Fees.

(a) Commitment Fee. Commencing on the Closing Date, subject to Section 5.15(a)(iii)(A), the Borrowers shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee in Dollars (the "Commitment Fee")

at a rate per annum equal to the Applicable Margin on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); provided, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar month during the term of this Agreement commencing January 31, 2018 and ending on the date upon which all Obligations arising under the Revolving Credit Facility shall have been Paid In Full. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) pro rata in accordance with such Revolving Credit Lenders' respective Revolving Credit Commitment Percentages.

(b) Other Fees. The Borrowers shall pay to the Administrative Agent for its own account fees in Dollars in the amounts and at the times specified in the Fee Letter. The Borrowers shall pay to the Lenders such fees in Dollars as shall have been separately agreed upon in writing in the amounts and at the times so specified.

(c) Overadvance Charge. Commencing on the Closing Date, and continuing until the Secured Obligations and Prepetition Secured Obligations have been Paid In Full, the Borrowers will pay to Administrative Agent, for ratable distribution to the Lenders, in immediately available funds, a fully earned and non-refundable monthly overadvance charge of One Hundred Fifty Thousand Dollars (\$150,000) on the last Business Day of each calendar month in which a Borrowing Base Overadvance was in existence on any day during such month.

SECTION 5.4 Manner of Payment. Each payment by the Borrowers on account of the principal of or interest on the Loans or of any fee, commission or other amounts (including the Reimbursement Obligation) payable to the Lenders under this Agreement shall be made in Dollars not later than 1:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent's Office for the account of the Lenders entitled to such payment, in Same Day Funds and shall be made without any set off, counterclaim or deduction whatsoever. Any payment received after such time but before 2:00 p.m. on such day shall be deemed a payment on such date for the purposes of Section 10.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. Any payment received after 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender at its address for notices set forth herein its Commitment Percentage in respect of the relevant Credit Facility (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal of or interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of any Issuing Lender's fees or L/C Participants' commissions shall be made in like manner, but for the account of such Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent's fees or expenses shall be made for the account of the Administrative Agent and any amount payable to any Lender under Sections 5.10, 5.11 or 12.3 shall be paid to the Administrative Agent for the

account of the applicable Lender. If any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment. Notwithstanding the foregoing, if there exists a Defaulting Lender each payment by the Borrowers to such Defaulting Lender hereunder shall be applied in accordance with Section 5.15(a)(ii).

SECTION 5.5 Evidence of Indebtedness.

(a) Extensions of Credit. The Extensions of Credit made by each Lender and each Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or such Issuing Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender or the applicable Issuing Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders or such Issuing Lender to the Borrowers and their Subsidiaries and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligations of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender or any Issuing Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Credit Note, Term Loan Note and/or Swingline Note, as applicable, which shall evidence such Lender's Revolving Credit Loans, Term Loans and/or Swingline Loans, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

(b) Participations. In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

SECTION 5.6 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 5.10, 5.11 or 12.3) greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

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

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 5.14 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant, other than to the Borrowers or any of their Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply).

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

#### SECTION 5.7 Administrative Agent's Clawback.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 12:00 noon on the date of any proposed borrowing and (ii) otherwise, prior to the proposed date of any borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Sections 2.3(b) and 4.2 and may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the daily average Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the Borrowers, the interest rate applicable to Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by the Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which

any payment is due to the Administrative Agent for the account of the Lenders, the Issuing Lender or the Swingline Lender hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the Issuing Lender or the Swingline Lender, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders, the Issuing Lender or the Swingline Lender, as the case maybe, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, Issuing Lender or the Swingline Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(c) Nature of Obligations of Lenders Regarding Extensions of Credit. The obligations of the Lenders under this Agreement to make the Loans and issue or participate in Letters of Credit are several and are not joint or joint and several. The failure of any Lender to make available its Commitment Percentage of any Loan requested by the Borrowers shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Commitment Percentage of such Loan available on the borrowing date.

SECTION 5.8 [Reserved].

SECTION 5.9 [Reserved].

SECTION 5.10 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender or any Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, the Issuing Lender or such other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, such

Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, such Issuing Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, such Issuing Lender or other Recipient, the Borrowers shall promptly pay to any such Lender, such Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Lender determines that any Change in Law affecting such Lender or such Issuing Lender or any lending office of such Lender or such Lender's or such Issuing Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or such Issuing Lender's capital or on the capital of such Lender's or such Issuing Lender's holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Lender's policies and the policies of such Lender's or such Issuing Lender's holding company with respect to capital adequacy), then from time to time upon written request of such Lender or such Issuing Lender the Borrowers shall promptly pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender, or an Issuing Lender or such other Recipient setting forth the amount or amounts necessary to compensate such Lender or such Issuing Lender, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrowers, shall be conclusive absent manifest error. The Borrowers shall pay such Lender or such Issuing Lender or such other Recipient, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Lender's or such other Recipient's right to demand such compensation; provided that the Borrowers shall not be required to compensate any Lender or an Issuing Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or such Issuing Lender or such other Recipient, as the case may be, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such Issuing Lender's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Survival. Without prejudice to the survival of any other agreement of the Borrowers hereunder, the agreements and obligations of the Borrowers contained in this Section shall survive the termination of this Agreement and the payment in full of the Loans and the obligations of the Borrowers thereunder and hereunder.

SECTION 5.11 Taxes.

(a) Defined Terms. For purposes of this Section 5.11, the term "Lender" includes any Issuing Lender and the term "Applicable Law" includes FATCA.

(b) Net of Taxes, Etc. Any and all payments to any Recipient by any Borrower hereunder or under any other Loan Document shall be made free and clear of and without withholding or deduction for any and all Taxes except as required by applicable Law. If any Borrower or Withholding Agent shall be required by law to withhold or deduct any Indemnified Taxes imposed by the United States of America or any political subdivision thereof from or in respect of any sum payable hereunder to any Recipient, then (i) the sum payable by the Borrowers shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 5.11), each Recipient receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Withholding Agent shall make such deductions and (iii) the applicable Withholding Agent shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. In addition, each Borrower agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America or any state of the United States from any payment made hereunder or otherwise with respect to this Agreement (hereinafter referred to as "Other Taxes"). Each Recipient shall provide to the Borrowers within a reasonable time a copy of any written notification it receives with respect to Indemnified Taxes or Other Taxes owing by the Borrowers to such Recipient hereunder; provided, that such Recipient's failure to send such notice shall not relieve any Borrower of its obligation to pay such amounts hereunder.

(c) Reserved.

(d) Indemnification by Borrowers. The Borrowers shall jointly and severally indemnify each Recipient (subject to any applicable order of the Bankruptcy Court) for the full amount of Indemnified Taxes and Other Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Borrower (including, without limitation, any Indemnified Taxes or Other Taxes imposed or asserted on, or attributable to, amounts payable under this Section 5.11) imposed on, or paid by, such Recipient or such Recipient's Affiliates and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes, Other Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Recipient). Payments by the Borrowers pursuant to this Section 5.11(d) shall be made within ten (10) Business Days from the date the applicable Recipient makes written demand therefor, which demand shall be

accompanied by a certificate describing in reasonable detail the basis thereof. Each Lender agrees to give notice to the Borrowers of the assertion of any claim by a Governmental Authority against such Lender relating to such Indemnified Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; provided, that such Lender's failure to notify the Borrowers promptly of such assertion shall not relieve the Borrowers of their obligations under this Section 5.11.

(e) Indemnification by the Recipients. Each Recipient shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Recipient (but only to the extent that any Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrowers to do so), (ii) any Taxes attributable to such Recipient's failure to comply with the provisions of Section 12.9(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Recipient, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Recipient by the Administrative Agent shall be conclusive absent manifest error. Each Recipient hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Recipient under any Loan Document or otherwise payable by the Administrative Agent to the Recipient from any other source against any amount due to the Administrative Agent under this paragraph (e). The agreements in this Section 5.11(e) shall survive the resignation and replacement of the Administrative Agent.

(f) Evidence of Payments. Within thirty (30) days after the date of any payment of Indemnified Taxes by the Borrowers, the Borrowers shall furnish to Administrative Agent the original or a certified copy of a receipt evidencing payment thereof.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.11(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such



Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender or its Affiliates.

(ii) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person:

(A) Any Lender that is a U.S. Person shall deliver to such Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of *Exhibit H-1* to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of such Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of *Exhibit H-2* or *Exhibit*

**H-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit H-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit such Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to such Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by such Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by such Borrower or the Administrative Agent as may be necessary for such Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(h) Reserved.

(i) Refunds. If Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes to which the Borrowers have indemnified for or paid additional amounts pursuant to this Section 5.11, it shall pay over such refund to the Borrowers (but only to the extent of payments made, or additional amounts paid, by the Borrowers under this Section 5.11 with respect to Indemnified Taxes giving rise to

such a refund), net of all out-of-pocket expenses of Administrative Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that the Borrowers, upon the request of Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrowers (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Administrative Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Administrative Agent or such Lender in the event Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 5.11(i) shall not be construed to require Administrative Agent or any Lender to make available its Tax returns (or any other information which it deems confidential) to any Borrower or any other Person or require Administrative Agent or any Lender to pay any amount to an indemnifying party pursuant to this Section 5.11(i), the payment of which would place Administrative Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

(j) Survival. Each party's obligations under this Section 5.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

#### SECTION 5.12 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 5.10, or requires the Borrowers to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, then such Lender shall, at the request of the Borrowers, use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.10 or Section 5.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.10, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 5.12(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.9), all of its interests, rights (other than its existing rights to payments pursuant to Section

5.10 or Section 5.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrowers shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.9;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.10 or payments required to be made pursuant to Section 5.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

SECTION 5.13 [Reserved].

SECTION 5.14 Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent, any Issuing Lender (with a copy to the Administrative Agent) or the Swingline Lender (with a copy to the Administrative Agent), the Borrowers shall Cash Collateralize the Fronting Exposure of such Issuing Lender and/or the Swingline Lender, as applicable, with respect to such Defaulting Lender (determined after giving effect to Section 5.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(a) Grant of Security Interest. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of each Issuing Lender and the Swingline Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans, to be applied pursuant to subsection (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, each Issuing Lender and the Swingline Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers will, promptly upon

demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 5.14 or Section 5.15 in respect of Letters of Credit and Swingline Loans shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of any Issuing Lender and/or the Swingline Lender, as applicable, shall no longer be required to be held as Cash Collateral pursuant to this Section 5.14 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, the Issuing Lenders and the Swingline Lender that there exists excess Cash Collateral; provided that, subject to Section 5.15, the Person providing Cash Collateral, the Issuing Lenders and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and provided further that to the extent that such Cash Collateral was provided by the Borrowers, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

#### SECTION 5.15 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 12.2.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lenders or the Swingline Lender hereunder; *third*, to Cash Collateralize the Fronting Exposure of the Issuing Lenders and the Swingline Lender with respect to such Defaulting Lender in accordance with Section 5.14; *fourth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan or funded participation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this

Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lenders' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Swingline Loans issued under this Agreement, in accordance with Section 5.14; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lenders or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or funded participations in Letters of Credit or Swingline Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit or Swingline Loans were issued at a time when the conditions set forth in Section 6.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Letters of Credit or Swingline Loans owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Letters of Credit or Swingline Loans owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Credit Commitments under the applicable Revolving Credit Facility without giving effect to Section 5.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 5.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive letter of credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 5.14.

(C) With respect to any Commitment Fee or other amount not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each applicable Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that (x) the conditions set forth in Section 6.2 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, repay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Lenders' Fronting Exposure in accordance with the procedures set forth in Section 5.14.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, the Issuing Lenders and the Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 5.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and

provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## ARTICLE VI

### CONDITIONS OF CLOSING AND BORROWING

SECTION 6.1 Conditions to Closing and Initial Extensions of Credit. The obligation of the Lenders to close this Agreement and to make the initial Loans or issue or participate in the initial Letter of Credit, if any, is subject to the satisfaction (or waiver) of each of the following conditions:

(a) Executed Loan Documents. This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Term Loan Note in favor of each Term Loan Lender requesting a Term Loan Note, a Swingline Note in favor of the Swingline Lender (in each case, if requested thereby), and the Security Documents, together with any other applicable Loan Documents, shall be in form and substance satisfactory to Administrative Agent and each Lender, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto, and shall be in full force and effect and no Default or Event of Default shall exist hereunder or thereunder.

(b) Closing Certificates; Etc. The Administrative Agent shall have received each of the following in form and substance satisfactory to the Administrative Agent and each Lender:

(i) Officer's Certificate. A certificate from a Responsible Officer of the Borrowers to the effect that (A) all representations and warranties of the Borrowers contained in this Agreement and the other Loan Documents are true, correct and complete in all material respects (except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects); (B) none of the Borrowers is in violation of any of the covenants contained in this Agreement and the other Loan Documents; (C) after giving effect to the Transactions, no Default or Event of Default has occurred and is continuing; (D) [reserved]; and (E) each of the Borrowers, as applicable, has satisfied each of the conditions set forth in Section 6.1 and Section 6.2 (other than Section 6.2(f)).

(ii) Certificate of Secretary of each Borrower. A certificate of a Responsible Officer of each Borrower certifying as to the incumbency and genuineness of the signature of each officer of such Borrower executing Loan Documents to which it is a party and certifying that (A) attached thereto is a true, correct and complete copy of the articles or certificate of incorporation or formation (or equivalent), as applicable, of such Borrower, certified as of a recent date by the Secretary of State of the applicable state of incorporation or formation, (B) there has been no amendment of the bylaws or other governing document of such Borrower since November 22, 2017, (C) attached thereto is a true, correct and complete copy of resolutions duly adopted by the board of directors (or other governing body) of such Borrower authorizing and approving the transactions



contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and (D) attached thereto is a true, correct and complete copy of each certificate required to be delivered pursuant to Section 6.1(b)(iii).

(iii) Certificates of Good Standing. Certificates as of a recent date of the good standing of each Borrower under the laws of its jurisdiction of incorporation, organization or formation (or equivalent), as applicable, and, to the extent requested by the Administrative Agent, each other jurisdiction where such Borrower is qualified to do business.

(iv) [Reserved].

(v) Borrowing Base Certificate. A Borrowing Base Certificate, certifying as to the Borrowing Base as of January [ ], 2018.

(c) Real and Personal Property Collateral.

(i) [Reserved].

(ii) [Reserved].

(iii) [Reserved].

(iv) Property and Liability Insurance. The Administrative Agent shall have received, in each case in form and substance reasonably satisfactory to the Administrative Agent, evidence of property, business interruption and liability insurance covering each Borrower, evidence of payment of all insurance premiums for the current policy year of each policy (with appropriate endorsements naming the Administrative Agent as lender's loss payee (and mortgagee, as applicable) on all policies for property hazard insurance and as additional insured on all policies for liability insurance), and if requested by the Administrative Agent, copies of such insurance policies.

(v) [Reserved].

(vi) Flood Documentation. The Lenders shall have received (i) all flood insurance documentation and completed all diligence and coverage in accordance with the Flood Disaster Protection Act of 1973, as amended and (ii) in the event that any real property subject to a mortgage is located in any area that has been designated by the Federal Emergency Management Agency as a "Special Flood Hazard Area", evidence that Borrowers have maintained flood insurance with respect to such real property (including any personal property which is located thereon) complying with the Flood Disaster Protection Act of 1973, as amended from time to time, in amounts satisfactory to all Lenders and otherwise satisfactory to all Lenders.

(d) [Reserved].

(e) [Reserved].

(f) Consents; Defaults.

(i) Governmental and Third Party Approvals. The Borrowers shall have received all material governmental, shareholder and third party consents and approvals necessary (or any other material consents as determined in the reasonable discretion of the Administrative Agent) in connection with the transactions contemplated by this Agreement and the other Loan Documents and all applicable waiting periods shall have expired without any action being taken by any Person that could reasonably be expected to restrain, prevent or impose any material adverse conditions on any of the Borrowers or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could reasonably be expected to have such effect.

(ii) No Injunction, Etc. No action, proceeding or investigation shall have been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby, or which, in the Administrative Agent's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby.

(g) Financial Matters.

(i) Financial Statements. The Administrative Agent shall have received the financial statements required to have been delivered under Section 8.1(b) and (d) of the Prepetition Credit Agreement for all periods ending on or before November 30, 2017.

(ii) [Reserved].

(iii) Payment at Closing. The Borrowers shall have paid or made arrangements to pay contemporaneously with closing (A) to the Administrative Agent and the Lenders the fees set forth or referenced in Section 5.3 and any other accrued and unpaid fees or commissions due hereunder, (B) all fees, charges and disbursements of counsel to the Administrative Agent and each Lender (directly to such counsel if requested by the Administrative Agent or such Lender) to the extent accrued and unpaid prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings and reasonable documentation evidencing such fees has been provided to Borrowers and is reflected in the Permitted Overadvance (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent or Lender, as applicable) and (C) to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents (which condition may be satisfied with the proceeds of the initial advance hereunder on the Closing Date).

(h) Miscellaneous.

(i) Budget and Variance Budget. The Administrative Agent shall have received an initial Variance Budget and an initial Budget in form and substance satisfactory to it and each Lender.

(ii) Orders. All first day and related orders (other than the Interim Order) entered by the Bankruptcy Court in the Cases shall be in form and substance reasonably satisfactory to the Administrative Agent. The Cash Management Order shall have been filed and entered by the Bankruptcy Court and shall be in form and substance satisfactory to the Administrative Agent.

(iii) Interim Order. The Bankruptcy Court shall have entered the Interim Order within three (3) Business Days of the commencement of the Cases, in form and substance satisfactory to the Administrative Agent and Required Lenders, entered on notice to such parties as may be reasonably satisfactory to the Administrative Agent and Required Lenders.

(iv) Motions. All motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with this Agreement, and the approval thereof shall be in form and substance satisfactory to the Administrative Agent.

(v) Other Documents. All opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Administrative Agent. The Administrative Agent shall have received copies of all other documents, certificates and instruments reasonably requested thereby, with respect to the transactions contemplated by this Agreement.

Without limiting the generality of the provisions of the last paragraph of Section 11.3, for purposes of determining compliance with the conditions specified in this Section 6.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**SECTION 6.2** Conditions to All Extensions of Credit. The obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit), convert or continue any Loan and/or any Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction (or waiver in accordance with Section 12.2 of the Agreement) of the following conditions precedent on the relevant borrowing, continuation, conversion, issuance or extension date:

(a) Continuation of Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true

and correct in all respects, on and as of such borrowing, continuation, conversion, issuance or extension date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date).

(b) No Existing Default. No Default or Event of Default shall have occurred and be continuing (i) on the borrowing, continuation or conversion date with respect to such Loan or after giving effect to the Loans to be made, continued or converted on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(c) Notices. The Administrative Agent shall have received a Notice of Borrowing from the Borrowers in accordance with Section 2.3(a) or Section 4.2, as applicable.

(d) Additional Documents. The Administrative Agent shall have received each additional document, instrument, legal opinion or other item reasonably requested by it.

(e) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(f) Final Order. With respect to any Extension of Credit hereunder after thirty (30) days after the Closing Date, the Bankruptcy Court shall have entered the Final Order approving this Agreement, in form and substance satisfactory to Administrative Agent each of the Lenders, which Final Order shall be in full force and effect and 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 and which provides for all then outstanding Prepetition Revolving Obligations to be Paid In Full using Revolving Credit Loans and all then outstanding Prepetition Term Obligations (other than the Specified Prepetition Obligations described in subclause (i) of such definition) to be Paid In Full using the Term Loan.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF THE BORROWERS

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Borrowers, jointly and severally, hereby represent and warrant to the Administrative Agent and the Lenders both before and after giving effect to the transactions contemplated hereunder, which representations and warranties shall be deemed made on the Closing Date and as otherwise set forth in Section 6.2, that:

SECTION 7.1 Existence and Standing. Each Borrower is a corporation, duly and properly incorporated or organized, as the case may be, validly existing and in good standing, if

applicable, under the laws of its jurisdiction of incorporation or organization and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted. Each Borrower is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to be so qualified or in good standing could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 7.2 Subsidiaries. No Borrower has any Subsidiaries except that Tower, Great Planes, United Model, Revell, EC, Axial, Arrma Durango and Hobbico Germany are each Wholly-Owned Subsidiaries of Hobbico and Revell GmbH is a Wholly-Owned Subsidiary of Hobbico Germany.

SECTION 7.3 Authorization and Validity. Subject to entry by the Bankruptcy Court of the Financing Order, each Borrower has the power and authority and legal right to execute and deliver the Loan Documents and to perform its obligations thereunder. Subject to entry by the Bankruptcy Court of the Financing Order, the execution and delivery by Borrowers of the Loan Documents and the performance of their obligations thereunder have been duly authorized by proper corporate proceedings, and the Loan Documents to which Borrowers are a party constitute legal, valid and binding obligations of Borrowers enforceable against Borrowers in accordance with their terms, except as enforceability may be limited by any Debtor Relief Laws.

SECTION 7.4 No Conflict; Government Consent. Subject to entry by the Bankruptcy Court of the Financing Order, neither the execution and delivery by any Borrower of the Loan Documents, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on any Borrower or (ii) any Borrower's articles of incorporation or by-laws, or (iii) the provisions of any indenture, instrument or agreement to which any Borrower is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in, or require, the creation or imposition of any Lien in, of or on the Property of any Borrower pursuant to the terms of any such indenture, instrument or agreement. Subject to entry by the Bankruptcy Court of the Financing Order, no order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority, or any subdivision thereof, which has not been obtained by any Borrower, is required to be obtained by any Borrower in connection with the execution and delivery of the Loan Documents, the borrowings under this Agreement, the payment and performance by Borrowers of the Obligations or the legality, validity, binding effect or enforceability of any of the Loan Documents.

SECTION 7.5 Compliance with Laws. Subject to entry by the Bankruptcy Court of the Financing Order, Borrowers have complied in all material respects with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of its business or the ownership of its Property.

SECTION 7.6 Tax Returns and Payments. Borrowers have filed all United States federal Tax returns and all other state and local Tax returns which are required to be filed and, except to the extent subject to the automatic stay, have paid all Taxes due pursuant to said returns

or otherwise owing by any Borrower, except such Taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with GAAP consistently applied and as to which no Lien exists. No Tax Liens have been filed and no claims are being asserted with respect to any such Taxes. The charges, accruals and reserves on the books of Borrowers in respect of any Taxes or other governmental charges are adequate.

SECTION 7.7 Intellectual Property Matters. Set forth on Schedule 7.7 is a true and correct list of all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing (collectively, "Intellectual Property") necessary or useful for the conduct of Borrowers' business substantially as now conducted without breach of or infringement upon any rights of others. No Borrower is in material default of its obligations under any license agreement and each material license agreement to which Borrowers are a party is in full force and effect and the terms thereof comply in all material respects with all applicable laws and regulations. Borrowers have not received from any other party to a license agreement any written notice of material default or intent to terminate, or notice from any third party that any of Borrowers' products materially infringe upon the intellectual property rights of any third party.

SECTION 7.8 Environmental Matters. In the ordinary course of its business, the officers of Borrowers consider and evaluate the effect of Environmental Laws upon the operation of Borrowers' businesses and periodically evaluate compliance by Borrowers with all applicable Environmental Laws. On the basis of such consideration and evaluation Borrowers have concluded that any violation by any Borrower of any Environmental Laws cannot reasonably be expected to have a Material Adverse Effect. Except as disclosed in Schedule 7.8 and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, Borrowers (i) have not failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) have not become subject to any liability under Environmental Laws, (iii) have not received notice of any claim with respect to any Environmental Laws, (iv) have not received notice that any of their operations are not in compliance with the requirement so applicable Environmental Laws or are the subject to any Federal or state investigation evaluating whether any remedial action is needed to respond to a release of any Hazardous Material or is expected to have a Material Adverse Effect or (v) do not know of any basis for any Environmental Liability.

SECTION 7.9 Compliance with ERISA/ESOP Representations.

(a) Schedule 7.9 hereto describes the Employee Benefit Plans to which any Borrower or any of their ERISA Affiliates may have obligations;

(b) except as disclosed in Schedule 7.9, each Employee Benefit Plan of any Borrower or any of their ERISA Affiliates is in material compliance with its terms and with the applicable provisions of ERISA, the Code and all other statutes and regulations applicable thereto and each such Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified and each trust related to any such Employee Benefit Plan is exempt from federal income under Section 501(a) of the Code;

(c) no Borrower nor any of their ERISA Affiliates maintain or contribute to any Employee Benefit Plan with an actuarial present value of projected benefit obligations that exceeds the fair market value of net assets available for such benefits, calculated on the basis of the actuarial assumptions specified in the most recent actuarial valuation for such Employee Benefit Plan, and no such Employee Benefit Plan provides for subsidized early retirement benefits that could materially adversely affect the funded status of such Employee Benefit Plan or Employee Benefit Plans in the event of a reduction in force or plant closing;

(d) no Borrower nor any of their ERISA Affiliates sponsor, maintain, participate in or contribute to any employee welfare benefit plan within the meaning of Section 3(1) of ERISA that provides benefits to employees after termination of employment other than as required by Section 601 of ERISA; as such, no Borrower nor any of their ERISA Affiliates are currently or will in the future be subject to the accounting recognition and disclosure standards of Statement of Financial Accounting Standards No. 106 (FASB 106);

(e) except as disclosed in Schedule 7.9, no Borrower nor any of their ERISA Affiliates have breached any of the responsibilities, obligations, or duties imposed on them by ERISA or the regulations promulgated thereunder with respect to any Employee Benefit Plan in any material respect;

(f) no Borrower nor any of their ERISA Affiliates have (i) failed to make a required contribution or payment to a Multiemployer Plan or Pension Plan or (ii) made or expects to make a complete or partial withdrawal under Sections 4203 or 4205 of ERISA from a Multiemployer Plan;

(g) at the date hereof, the aggregate potential withdrawal liability payment, as determined in accordance with Title IV of ERISA, of any Borrower and any of their ERISA Affiliates with respect to all Employee Benefit Plans that are Multiemployer Plans do not exceed \$50,000 and, to the best of any Borrower's and its ERISA Affiliate's knowledge, no Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA;

(h) no Borrower nor any of their ERISA Affiliates have failed to make a required installment or any other required payment under Section 412 of the Code on or before the due date for such installment or other payment;

(i) no Borrower nor any of their ERISA Affiliates are required to provide security to an Employee Benefit Plan due to an Employee Benefit Plan amendment that results in an increase in current liability for the plan year;

(j) no liability to the PBGC has been, or is expected by any Borrower or any of their ERISA Affiliates to be, incurred by any Borrower or any of their ERISA Affiliates, other than the payment of premiums, and there are no premium payments that have become due and which are unpaid;

(k) no events have occurred in connection with any Employee Benefit Plan that might constitute grounds for the termination of any such Employee Benefit Plan by the PBGC or for the appointment by any United States District Court of a trustee to administer any such Employee Benefit Plan;

(l) no Termination Event has, in the case of any Employee Benefit Plan maintained by any Borrower or any ERISA Affiliate other than a Multiemployer Plan, occurred and is continuing, or to the best of each Borrower's knowledge, has occurred and is continuing in the case of any such Employee Benefit Plan that is a Multiemployer Plan;

(m) no action, suit or claim is pending or threatened with respect to any Employee Benefit Plan maintained by Borrowers or any of their ERISA Affiliates other than routine claims for benefits;

(n) no Employee Benefit Plan maintained by any Borrower or any of their ERISA Affiliates had failed to meet the minimum funding standards of Section 302 of ERISA or Section 412 of the Code, whether or not waived, as of the last day of the most recent fiscal year of such Employee Benefit Plan or, in the case of any Multiemployer Plan, as of the most recent fiscal year of such Multiemployer Plan for which the annual reports of such Multiemployer Plan's actuaries and auditors have been received, and there has been no determination that any Employee Benefit Plan is, or is expected to be, in "at risk" status (within the meaning of Title IV of ERISA) or that any Multiemployer Plan is an "endangered" or "critical" status (within the meaning of Title IV of ERISA);

(o) no Borrower nor any of their ERISA Affiliates has engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code prior to the date hereof, and the execution, delivery, and carrying out of this Agreement will not involve any such non-exempt prohibited transactions or any transaction in connection with which a tax could be imposed pursuant to Section 4975 of the Code;

(p) no Borrower nor any of their ERISA Affiliates has, by reason of the ESOP Transaction or any other transaction contemplated hereby, any obligation to make any payment to any current or former employee, director, officer or consultant pursuant to any Employee Benefit Plan or any other contract, agreement (either oral or written), or obligation to make any such payment at a time earlier than when it would be otherwise payable under such Employee Benefit Plan except for any payment to be made upon termination of employment or as otherwise expressly required by such Employee Benefit Plan, ERISA or the Code;

(q) the ESOP is a validly existing employee stock ownership plan as described in Section 4975(e)(7) of the Code and has been duly adopted by Hobbico and the trust portion thereof is exempt from federal income tax under Section 501(a) of the Code. Borrowers have submitted to Administrative Agent true and correct copies of the ESOP Plan Documents and all amendments and supplements thereto. The ESOP Plan is designed to meet the qualification requirements set forth in Sections 401(a) and 409 of the Code and the rules and regulations promulgated thereunder and is entitled to all the benefits afforded to employee stock ownership plans thereunder and the shares of stock held by the ESOP are "Employer Securities" within the meaning of Section 409(l) of the Code;

(r) all valuations of the Hobbico Stock held by the ESOP have been made by the ESOP trustee after reference to a valuation report prepared by a qualified independent appraiser within the meaning of Section 401(a)(28)(C) of the Code (the "Qualified Appraiser") retained by the trustee of the ESOP and all of the information provided by, or on behalf of, Borrowers to the



Qualified Appraiser for the ESOP, in connection with the transactions contemplated by the ESOP Transaction Documents, was true and accurate in all material respects and there was no failure by, or on behalf of, Borrowers to disclose any material information to the Qualified Appraiser for the ESOP;

(s) the purchase of the shares of stock by the ESOP pursuant to the ESOP Subscription Agreement, the execution, delivery, and performance of this Agreement, the other Loan Documents, and the ESOP Transaction Documents and the consummation of the transactions contemplated hereby and thereby did not and will not: (i) involve a prohibited transaction under Section 406 of ERISA or Section 4975 of the Code for which there is no exemption under Section 408 of ERISA or Section 4975 of the Code, respectively; (ii) constitute a violation of the fiduciary responsibility standards imposed by Section 4094 of ERISA; or (iii) adversely affect the qualified status of the ESOP under Sections 401(a) or 4975(e)(7) of the Code;

(t) in connection with the ESOP Transaction, the trustee of the ESOP has received (i) an opinion from a Qualified Appraiser providing that the purchase price for the shares of Hobbico Stock purchased by the ESOP pursuant to the ESOP Subscription Agreement did not exceed "adequate consideration" (as such term is defined in Section 3(18) of ERISA) and (ii) an opinion that the terms of the ESOP Transaction are fair to the ESOP from a financial point of view;

(u) it is not contemplated that the allocation of shares of stock to ESOP participants will result in a violation of the requirements set forth in Section 409(p)(1) of the Code and no Borrower has otherwise engaged in a transaction that the IRS has designated or described as a Listed Transaction involving an S-Corporation Employee Stock Ownership Plan; and

(v) the ESOP Loan was made by Hobbico to the ESOP on October 21, 2005 pursuant to the terms of the ESOP Note and applied by the ESOP in its entirety to the payment of the purchase price of the purchased shares from Hobbico pursuant to the terms of the ESOP Subscription Agreement and the ESOP had at such time, and has now, full right, power, and authority to borrow from Hobbico.

SECTION 7.10 Margin Stock. Margin Stock (as defined in Regulation U) constitutes less than 25% of the value of those assets of Borrowers which are subject to any limitation on sale, pledge, or other restriction hereunder.

SECTION 7.11 Government Regulation. None of Borrowers is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended. Since their respective dates of incorporation or organization, as the case may be, each of Borrowers has not been, and is not, a "United States real property holding corporation," as defined in Section 897(c)(2) of the Code and in Section 1.897-2(b) of the Treasury Regulations issued thereunder.

SECTION 7.12 Material Agreements. Borrowers are not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any agreement to which it is a party, which default could reasonably be expected

to have a Material Adverse Effect, or (ii) other defaults existing on the Closing Date and set forth on Schedule 7.12, any Material Indebtedness Agreement.

SECTION 7.13 Labor Relations. There are no strikes, lockouts or other labor disputes against any Borrower, or, to the best of Borrowers' knowledge, threatened against or affecting any Borrower, in any case which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect and no significant unfair labor practice complaint is pending against any Borrower or, to the best knowledge of Borrowers, threatened against them before any Governmental Authority in any case which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

SECTION 7.14 Insurance. Borrowers currently have in full force and effect insurance coverages of the scope, type and amount contemplated under Section 8.6. Schedule 7.14 attached hereto contains a summary of such insurance and is complete and accurate in all material respects. This summary includes the insurer's or insurers' name(s), policy number(s), expiration date(s), amount(s) of coverage, type(s) of coverage, any material exclusion(s), and deductibles. This summary also includes similar information, and describes any reserves, relating to any self-insurance program that is in effect.

SECTION 7.15 Financial Statements.

(a) Hobbico has heretofore furnished to Lenders its consolidated balance sheet and statements of income, shareholders' equity and cash flows (i) as of and for the fiscal year ended December 31, 2015, as audited by its independent public accountants, and (ii) as of and for the month on or nearest to November 30, 2017, certified by the Chief Financial Officer of Hobbico. Such financial statements present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of Hobbico as of such dates and for such periods in accordance with GAAP consistently applied, subject to, in the case of the statements referred to in clause (ii) of the first sentence of this paragraph, year-end audit adjustments (none of which are material) and the absence of footnotes.

(b) Except as set forth on Schedule 7.15, Borrowers have no obligation, indebtedness or liability (whether accrued, absolute, contingent or otherwise, known or unknown, and whether due or to become due) that was not reflected or reserved against in the balance sheets or the notes thereto that are part of the financial statements delivered as set forth in subsection (a) above, except for those incurred in the ordinary course of business subsequent to December 31, 2015, and which are fully reflected on Borrowers' books of account.

SECTION 7.16 Conduct of Business. As of the Closing Date, except as set forth in Schedule 7.16 or pursuant to the Loan Documents and the transactions contemplated thereby, since December 31, 2015, the business of the Borrowers has been conducted only in the ordinary course consistent with past practices, and no Borrower has (i) incurred, or agreed to incur, any Indebtedness, (ii) experienced any damage, destruction or loss not covered by insurance, (iii) declared, set aside or paid any dividend or other distribution (whether in cash, equity securities, interests or Property) in respect of its equity securities, (iv) entered into any Obligation involving any director, officer, manager, shareholder, member, employee of, any Borrower or any Affiliate, (v) granted or committed to grant to any director, officer, manager,

member, employee or Affiliate of any Borrower any increase in compensation or benefits, other than in the ordinary course of business, consistent with past practices, or (vi) granted or committed to grant to any director, officer, manager, employee or Affiliate of any Borrower any increase in or right to severance or termination pay or any other compensation or benefits payable upon a change in control of any such entity.

SECTION 7.17 [Reserved].

SECTION 7.18 Ownership of Properties.

(a) Except as set forth on Schedule 7.18, on the date of this Agreement, Borrowers have good and marketable title, free and clear of all Liens other than those permitted by Section 9.2, to all of the Properties and assets reflected in Borrowers' most recent financial statements provided to Administrative Agent as owned by Borrowers.

(b) The entry of the Financing Order is effective to create in favor of Administrative Agent, for the benefit of itself, the Lenders, the Issuing Lenders and the other Secured Parties, as security for the Secured Obligations, (i) a valid first priority (other than with respect to the Permitted Priority Liens) Lien on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, and (ii) an allowed administrative expense in each of the Cases having priority under Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses (including, without limitation, such expenses specified in Sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code), subject only to the Permitted Priority Liens (the "Superpriority Claims").

(c) Except for the Financing Order, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (x) the pledge or grant by any Borrower or any of its respective Subsidiaries of the Liens purported to be created in favor of Administrative Agent pursuant to this Agreement or any of the Security Documents or (y) the exercise by Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to this Agreement, any of the Security Documents or created or provided for by applicable law), except as may be required in connection with the disposition of any pledged Collateral by laws generally affecting the offering and sale of securities.

SECTION 7.19 Litigation. Other than the filing, commencement and continuation of the Cases and any litigation resulting therefrom and except as set forth on Schedule 7.19, there is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of Borrowers, threatened against or affecting Borrowers, which has had or could reasonably be expected to result in liabilities in excess of \$100,000 or a Material Adverse Effect or which seeks to prevent, enjoin or delay, the making of any Loans. Other than any liability incident to any litigation, arbitration or proceeding that (i) could reasonably be expected to result in liabilities in excess of \$100,000 or result in a Material Adverse Effect, (ii) seeks to prevent, enjoin or delay, the making of any Loans or (iii) is set forth on Schedule 7.19, Borrowers have no Contingent Obligations not provided for or disclosed in the financial statements referred to in Section 7.15.

SECTION 7.20 Anti-Terrorism; Anti-Money Laundering. No Borrower nor any of its Subsidiaries or, to their knowledge, any of their Related Parties (i) is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States (50 U.S.C. App. §§ 1 et seq.), (ii) is in violation of (A) the Trading with the Enemy Act, (B) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V) or any enabling legislation or executive order relating thereto or (C) the PATRIOT Act (collectively, the "Anti-Terrorism Laws") or (iii) is a Sanctioned Person. No part of the proceeds of any Extension of Credit hereunder will be unlawfully used directly or indirectly to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Country, or in any other manner that will result in any violation by any Person (including any Lender, the Administrative Agent, the Issuing Lender or the Swingline Lender) of any Anti-Terrorism Laws.

Each Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of such Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. No Loan or Letter of Credit, use of the proceeds of any Loan or Letter of Credit, or other transactions contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions. No Borrower will request any Loan or Letter of Credit, and no Borrower shall use, and each Borrower shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan or Letter of Credit in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws.

SECTION 7.21 Certain Transactions. Except as set forth on Schedule 7.21 hereto, none of the officers, directors, or employees of any Borrower is presently a party to any transaction with any Borrower (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of any Borrower, any corporation, partnership, trust or other entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee or partner.

SECTION 7.22 Bank Accounts. Schedule 7.22 sets forth the account numbers and location of all bank accounts (including, without limitation, all deposit accounts, investment accounts, securities accounts and brokerage accounts) of each Borrower.

SECTION 7.23 Accuracy of Information. No information provided to Administrative Agent or Lenders by or on behalf of Borrowers contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. There is no material fact known to any Borrower which has not been disclosed in writing to Administrative Agent, or counsel to Administrative Agent. No representation or warranty made by any Borrower set forth herein, or in any schedule hereto, in any supplement to any schedule contains or will contain any untrue statement of a material fact, or omits to state any material fact, necessary in order to make the statement therein, in light of the circumstances in which it was made, not misleading.

SECTION 7.24 S Corporation. At all times since August 1, 1984 (the "Conversion Date"), Hobbico has been a validly electing S corporation (within the meaning of Section 1361(a)(1) of the Code), and under analogous state and local laws. Subsequent to the Conversion Date, Hobbico has taken no action that resulted or could result in the termination of Hobbico's status as an S corporation within the meaning of Section 1361(a)(1) of the Code, including without limitation, the ESOP Transactions. Hobbico has no potential liability for any tax under Code Section 1374. Each Subsidiary of Hobbico has been a "qualified subchapter S subsidiary" within the meaning of Code Section 1361(b)(3)(B) at all times during the existence of such Subsidiary.

SECTION 7.25 Customers and Suppliers.

(a) Except as set forth on Schedule 7.25, as of the Closing Date, none of Borrowers has received any notice or has any knowledge of any intention on the part of any Material Customer to terminate any purchase contract or to reduce its purchases from the levels sustained by such Material Customer during the 12 month period ended November 30, 2017.

(b) Except as set forth on Schedule 7.25, as of the Closing Date, none of the Borrowers has received any notice or has any knowledge of any intention on the part of any Material Supplier, to cease doing business with any Borrower or to otherwise alter its relationship with any Borrower in an adverse manner.

SECTION 7.26 WARN Act. As of the Closing Date, each Borrower is now, and at all times during the term or any renewal term hereof shall be, if applicable, in compliance with the Worker's Adjustment and Retraining Notification Act.

SECTION 7.27 Securities Laws. None of Borrowers have violated any applicable federal or state securities laws in connection with the offer, sale or issuance of any of their Equity Interests.

SECTION 7.28 Capitalization. As of the Closing Date, all outstanding Equity Interests of Hobbico have been duly authorized by all necessary corporate action. As of the Closing Date, all outstanding Equity Interests of Hobbico are validly issued, fully paid and nonassessable and are free and clear of all Liens, except for Liens permitted by Section 9.2, and the issuance of the foregoing has not been or will not be, as the case may be, subject to preemptive rights in favor of any Person and will not result in the issuance of any additional Equity Interests of Hobbico or the triggering of any anti-dilution or similar rights contained in any options, warrants, debentures or other securities or agreements of Hobbico. There are no outstanding warrants, options, rights and securities convertible into Equity Interests of Hobbico, except in connection with the ESOP Plan.

SECTION 7.29 Employees. As of the Closing Date, except as set forth on Schedule 7.29, (a) Borrowers are not aware that any executive or key senior employee of any Borrower or any group of such employees has any plans to terminate employment with Borrowers, as the case may be and (b) none of Borrowers nor, to the knowledge of Borrowers, any of their employees, is subject to any noncompete, nondisclosure, confidentiality, employment, consulting, collective bargaining or similar agreement relating to, affecting or in conflict with, the present or proposed

business activities of Borrowers or any such Person's right to participate in the affairs of Borrowers.

SECTION 7.30 Brokerage Fees. As of the Closing Date, there are no brokerage commissions, finder's fees or similar fees or commissions payable by any of Borrowers in connection with the consummation of the Transactions.

SECTION 7.31 Budget and Variance Budget. The Budget and the Variance Budget were each prepared by the Borrowers' chief financial officer and Borrowers' management (including members of management serving in such capacity in connection with the Keystone Engagement Agreement), and reviewed and approved by the Chief Restructuring Officer, and represents the good faith belief of such Persons at such time as to the probable course of Borrowers' business and financial affairs, over the periods shown therein, subject to the assumptions stated therein.

SECTION 7.32 Financing Order. The Financing Order is in full force and effect and is not subject to a pending appeal, motion for leave to appeal, or other proceeding to set aside such order and has not been reversed, modified, stayed, or vacated absent Administrative Agent's written consent.

## ARTICLE VIII

### AFFIRMATIVE COVENANTS

Until all of the Obligations have been Paid In Full, each Borrower will, and will cause each of its Subsidiaries to:

SECTION 8.1 Financial Statements. Deliver to the Administrative Agent, in form and detail satisfactory to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Annual Financial Statements. Within one hundred twenty (120) days after the end of each Fiscal Year (commencing with the Fiscal Year ended December 31, 2017), an unaudited Consolidated and consolidating balance sheet of the Borrowers and their Subsidiaries as of the close of such Fiscal Year and unaudited Consolidated and consolidating statements of income, retained earnings and cash flows including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year.

(b) Monthly Financial Statements. Within thirty (30) days after the end of each month, an unaudited Consolidated and consolidating balance sheet of the Borrowers and their Subsidiaries as of the close of such month and unaudited Consolidated and consolidating statements of income, retained earnings and cash flows for such month and the then elapsed portion of such Fiscal Year, eliminating all intercompany transactions, and in English and denominated in U.S. Dollars and prepared and certified by the chief financial officer of Hobbico and reviewed and approved by the Chief Restructuring Officer and Borrowers' management

(including members of management and serving in such capacity in connection with Keystone Engagement Agreement), as presenting fairly in all material respects the financial condition and results of operation of the Borrowers and their Subsidiaries on a Consolidated and consolidating basis in accordance with GAAP consistently applied, subject to normal year-end adjustments (none of which shall be material) and the absence of footnotes.

(c) [Reserved].

(d) Budget and Variance Report. (i) As soon practicable and in any event by 5:00 p.m. (Central time) on Wednesday of each week, (A) an updated Budget for the then remaining thirteen-week period (or, upon request by Administrative Agent, the following thirteen-week period) and (B) a Variance Report, in each case, in form and substance satisfactory to Administrative Agent and the Required Lenders and (ii) on or before 5:00 p.m. (Central time) on [\_\_\_\_], 2018 and thereafter by 5:00 p.m. (Central time) on the last Business Day of the tenth week of each thirteen-week period thereafter, an updated Variance Budget for the succeeding thirteen-week period.

(e) [Reserved].

SECTION 8.2 Certificates; Other Reports. Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) together with the financial statements that are delivered pursuant to Section 8.1(a) and Section 8.1(b), a duly completed officer's certificate signed by the chief financial officer of Hobbico certifying as to the financial statements and stating that no Default or Event of Default exists, or if a Default or Event of Default exists, stating the nature and status thereof;

(b) If requested by Administrative Agent or any Lender, together with the financial statements required under Sections 8.1(a) or 8.1(b), a copy of management's summary report consistent with such summary reports provided to the board of directors of Hobbico, or any committee or director thereof, in the past and from time to time hereafter.

(c) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Borrower or any Subsidiary thereof with any Environmental Law that could reasonably be expected to have a Material Adverse Effect;

(d) promptly upon the request thereof, such other information and documentation required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including, without limitation, the PATRIOT Act), as from time to time reasonably requested by the Administrative Agent or any Lender;

(e) such other information (including non-financial information) as the Administrative Agent or any Lender may from time to time reasonably request;

(f) Obtain and furnish at Administrative Agent's request, (A) as soon as available after the close of each fiscal year of the ESOP, (A) the Form 5500 for the ESOP, (B) an audit report for such year and accompanying financial statements, including a statement of net assets

available for benefits and statement of changes in net assets available for benefits for the ESOP Trust, all as certified by independent public accountants of recognized standing selected by Hobbico and reasonably satisfactory to Administrative Agent, if such audit and certification are required for the ESOP under ERISA, (C) a summary of the valuation of the shares of the stock of Hobbico held by the ESOP as determined by the Qualified Appraiser; (D) any repurchase/purchase obligation studies received by any Borrower, and (E) such other information relating to the affairs of the ESOP as Administrative Agent reasonably may request from time to time;

(g) (i) as soon as practicable and in any event within 3 Business Days after the end of each week (or more frequently if requested by Administrative Agent), (A) a Borrowing Base Certificate, (B) an Account roll-forward with supporting details in a format acceptable to Administrative Agent, (C) a detailed aging, by total, of Borrowers' Accounts, together with a reconciliation and supporting documentation for any reconciling items noted, each in a form consistent with Borrowers' practices as of the Closing Date, (D) a detailed calculation of those Accounts that are not Eligible Accounts or Eligible Foreign Accounts, (E) a detailed Inventory system/perpetual report by category with additional detail showing additions to and deletions therefrom, (F) a detailed calculation of Inventory categories that are not Eligible Inventory, (G) a detailed aging, for each vendor, of Borrowers' accounts payable and any book overdraft and an aging, by vendor, of any held checks, including, without limitation, information regarding all outstanding invoices for each vendor, and (H) such other collateral reporting and supporting detail as Administrative Agent may reasonably request, and (ii) together with the financial statements that are delivered pursuant to Section 8.1(b), (A) a reconciliation of the Account roll-forwards delivered pursuant to subclause (i)(B) above to Borrowers' general ledger, (B) a reconciliation of the Inventory system/perpetual reports delivered pursuant to subclause (i)(E) above to Borrowers' general ledger, (C) an Account roll-forward with supporting details with respect to Revell GmbH in a format acceptable to Administrative Agent and including a reconciliation to Revell GmbH's general ledger, (D) a detailed aging, by total, of Revell GmbH's Accounts, together with a reconciliation and supporting documentation for any reconciling items noted, (E) a detailed Inventory system/perpetual report with respect to Revell GmbH by category with additional detail showing additions to and deletions therefrom together with a reconciliation to Revell GmbH's general ledger accounts, (F) a summary aging, by vendor, of Revell GmbH's accounts payable and any book overdraft and an aging, by vendor, of any held checks, and (G) such other collateral reporting and supporting detail as Administrative Agent may request;

(h) (i) as soon as practicable and in any event within 3 Business Days after receipt thereof, a copy of all bank statements with respect to all deposit accounts and securities accounts (including, without limitation, foreign depository accounts) maintained by Borrowers with depository banks other than Wells Fargo Bank, National Association, and (ii) promptly upon the request therefor, such other information with respect to such deposit accounts and securities accounts (including, without limitation, current and historical account balances and use of proceeds) as Administrative Agent may request from time to time in its sole discretion, in each case, in form and substance satisfactory to Administrative Agent; and

(i) contemporaneously with the filing or delivery thereof, all material pleadings, motions, application and judicial information filed by or on behalf of any Borrower with the Bankruptcy Court or provided by or to the U.S. Trustee or a Committee, at any time such



document is filed or delivered, as applicable related to this Agreement or any Sale or other sale of Collateral.

The Borrower hereby acknowledges that the Administrative Agent will make available to the Lenders and the Issuing Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Indebtedness Domain, IntraLinks, SyndTrak Online or another similar electronic system (the "Platform").

SECTION 8.3 Notice of Litigation and Other Matters. Promptly (but in no event later than ten (10) days after any Responsible Officer of any Borrower obtains knowledge thereof) notify the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice) in writing of:

- (a) the occurrence of any Default or Event of Default;
- (b) other than with respect to the Cases, the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving any Borrower or any Subsidiary thereof or any of their respective properties, assets or businesses;
- (c) any notice of any violation received by any Borrower or any Subsidiary thereof from any Governmental Authority including, without limitation, any notice of violation of Environmental Laws which in each case could reasonably be expected to have a Material Adverse Effect;
- (d) any labor controversy that has resulted in, or threatens to result in, a strike or other work action against any Borrower or any Subsidiary thereof;
- (e) any attachment, judgment, lien, levy or order exceeding a Substantial Portion that may be assessed against or threatened against any Borrower or any Subsidiary thereof;
- (f) any event which constitutes or which with the passage of time or giving of notice or both would constitute a default or event of default under any Material Indebtedness Agreement to which any Borrower or any of their Subsidiaries is a party or by which the Borrowers or any Subsidiaries thereof or any of their respective properties may be bound which could reasonably be expected to have a Material Adverse Effect;
- (g) (i) any unfavorable determination letter from the IRS regarding the qualification of an Employee Benefit Plan under Section 401(a) of the Code (along with a copy thereof), (ii) all notices received by any Borrower or any ERISA Affiliate of the PBGC's intent to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (iii) all notices received by any Borrower or any ERISA Affiliate from a Multiemployer Plan sponsor concerning the imposition or amount of withdrawal liability pursuant to Section 4202 of ERISA and (iv) any Borrower obtaining knowledge or reason to know that any Borrower or any ERISA Affiliate has filed or intends to file a notice of intent to terminate any Pension Plan under a distress termination within the meaning of Section 4041(c) of ERISA;

(h) Borrowers will give Administrative Agent ten Business Days' prior notice of any proposed amendment to the ESOP (other than amendments required by Applicable Law which are necessary to maintain the ESOP as an "employee stock ownership plan" and a tax-qualified plan under the Code and applicable rules and regulations);

(i) As soon as any Borrower obtains actual knowledge thereof, notice of any default or event of default under the Subordinated Loan Documents or the ESOP Transaction Documents;

(j) As soon as any Borrower obtains actual knowledge thereof, notice of any breach or termination of any material brand licenses; and

(k) as soon as possible, and in any event within ten Business Days, after Borrowers or any ERISA Affiliate knows or has reason to know of any investigation or review by any governmental agency, or action, suit, proceeding or arbitration concerning any matter with respect to the ESOP or the ESOP Transaction, deliver to Administrative Agent a certificate of a responsible officer of Borrowers setting forth the details of the events described above and the action that Borrowers or any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice or filing relating thereto.

In addition to the foregoing, upon the request of Administrative Agent, but in all events not less than once per week, Borrowers will participate in meetings or conference calls with Administrative Agent and Lenders and their representatives, consultants (including, without limitation, any Agent Consultant), and agents, at such dates and times to be provided by Administrative Agent upon reasonable notice, and will cause available senior members of management, the Chief Restructuring Officer, Consultant, and any investment bankers (including the Investment Banker) and other advisors of Borrowers and their Subsidiaries, as applicable or as requested by Administrative Agent or such Lenders, and solely to the extent reasonably requested by Administrative Agent, one or more members of the board of directors of Borrowers and their Subsidiaries, to participate in such calls for the purpose of discussing the status of the financial, collateral, and operational condition, businesses, liabilities, assets, and prospects of the Borrower and their Subsidiaries and any sale, refinance or other strategic transaction efforts. Upon Administrative Agent's reasonable request, and subject to any confidentiality restrictions, the Borrowers and their Subsidiaries shall promptly provide copies of all non-privileged written materials provided to, or produced by, Borrowers and their Subsidiaries in connection with any sale, refinance, or other strategic transaction efforts (including, without limitation, any indications of interest, letters of intent, confidentiality agreements, draft purchase documents, and commitment letters) and reports relating to the financial, collateral, or operational performance of the Borrowers and their Subsidiaries or any other non-privileged written material as Administrative Agent and the Lenders may request from time to time. Without limiting the foregoing, each Borrower agrees to notify Administrative Agent promptly upon such Borrower becoming aware of any material change or development relating to any sale or refinance efforts or to the financial, collateral, or operational condition, businesses, assets, liabilities, or prospects of such Borrower, any of its Affiliates, or any of their respective Subsidiaries.

SECTION 8.4 Preservation of Corporate Existence and Related Matters. Except as permitted by Section 9.4, preserve and maintain its separate corporate existence and all rights,

franchises, licenses and privileges necessary to the conduct of its business, and qualify and remain qualified as a foreign corporation or other entity and authorized to do business in each jurisdiction.

SECTION 8.5 Maintenance of Property and Licenses.

(a) In addition to the requirements of any of the Security Documents, protect and preserve all Properties necessary in or useful and material to its business, including copyrights, patents, trade names, service marks and trademarks; maintain in good working order and condition, ordinary wear and tear excepted, all buildings, equipment and other tangible real and personal property; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such Property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner.

(b) Maintain, in full force and effect in all material respects, each and every material license, permit, certification, qualification, approval or franchise issued by any Governmental Authority (each a "License") required for each of them to conduct their respective businesses as presently conducted.

SECTION 8.6 Insurance. Maintain (a) insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by Applicable Law and as are required by any Security Documents (including, without limitation, hazard and business interruption insurance), and (b) with respect to all real property locations located in any area that has been designated by the Federal Emergency Management Agency as a "Special Flood Hazard Area", flood insurance with respect to such real property locations (including any personal property which is located thereon) complying with the Flood Disaster Protection Act of 1973, as amended from time to time, in an amount satisfactory to all Lenders and otherwise satisfactory to all Lenders. All such insurance shall, (a) provide that no cancellation or material modification thereof shall be effective until at least 30 days after receipt by the Administrative Agent of written notice thereof, (b) name the Administrative Agent as an additional insured party thereunder and (c) in the case of each casualty insurance policy, name the Administrative Agent as lender's loss payee. On the Closing Date and from time to time thereafter deliver to the Administrative Agent upon its request information in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

SECTION 8.7 Accounting Methods and Financial Records. Maintain a system of accounting, and keep proper books, records and accounts (which shall be true and complete in all material respects) as may be required or as may be necessary to permit the preparation of financial statements in accordance with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction over it or any of its Properties.

SECTION 8.8 Payment of Taxes and Other Obligations. Subject to approval by the Bankruptcy Court and in accordance with the Variance Budget, pay and perform (a) all taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its

Property and (b) all other Indebtedness, obligations and liabilities in accordance with customary trade practices; provided, that the Borrowers or their Subsidiaries may contest any item described in clause (a) of this Section in good faith so long as adequate reserves are maintained with respect thereto in accordance with GAAP.

SECTION 8.9 Compliance with Laws and Approvals. Observe and remain in compliance in all material respects with all Applicable Laws and maintain in full force and effect all Governmental Approvals, in each case applicable to the conduct of its business including, without limitation all Environmental Laws, Anti-Corruption Laws, and applicable Sanctions.

SECTION 8.10 Environmental Laws. In addition to and without limiting the generality of Section 8.9, (a) comply with, and ensure such compliance by all tenants and subtenants with all applicable Environmental Laws and obtain and comply with and maintain, and ensure that all tenants and subtenants, if any, obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws, except to the extent that the same are being contested in good faith by appropriate proceedings and the pendency of such proceedings could not be reasonably expected to have a Material Adverse Effect, and (c) defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective parents, Subsidiaries, Affiliates, employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the presence of Hazardous Materials, or the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of the Borrowers or any such Subsidiaries, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing directly result from the gross negligence or willful misconduct of the party seeking indemnification therefor, as determined by a court of competent jurisdiction by final nonappealable judgment.

SECTION 8.11 Compliance with ERISA. In addition to and without limiting the generality of Section 8.9, (a) except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) comply with applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans, (ii) not take any action or fail to take action the result of which could reasonably be expected to result in a liability to the PBGC or to a Multiemployer Plan, (iii) not participate in any prohibited transaction that could result in any civil penalty under ERISA or tax under the Code and (iv) operate each Employee Benefit Plan in such a manner that will not incur any Tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code and (b) furnish to the Administrative Agent upon the Administrative Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the Administrative Agent.

SECTION 8.12 ESOP Administration.

(a) Borrowers will not (i) amend the ESOP or any of the ESOP Plan Documents (other than amendments required by changes of law which are necessary to maintain the ESOP as an "employee stock ownership plan" and a tax-qualified plan under the Code and applicable rules and regulations) without the prior written consent of Administrative Agent, not to be unreasonably withheld; (ii) terminate or permit termination of the ESOP Plan or any of the ESOP Plan Documents; (iii) permit the ESOP Trust to incur or permit to exist any Indebtedness or other liabilities other than: (1) the debt under the ESOP Note; (2) liabilities to participants (including former participants) in the ESOP Plan and for any withholding taxes on distributions under the ESOP Plan; (3) advances made by any Borrower to the ESOP Trust in connection with operation of the ESOP Plan; and (4) payables arising in the ordinary course of ESOP Plan administration; (iv) permit the ESOP Trust to create or permit to exist upon or be subjected to, any lien or other encumbrance upon any assets or property of any kind or character at any time owned by the ESOP Trust, other than pursuant to the terms of the ESOP and applicable law and as contemplated by the ESOP Transaction Documents; (v) establish any tax qualified retirement plan not currently in existence (other than the ESOP Plan), or (vi) amend or waive any of the ESOP Transaction Documents, except as may otherwise be required by a Governmental Authority and otherwise without the prior written consent of Administrative Agent, not to be unreasonably withheld.

(b) Borrowers will (i) at all times preserve and maintain the status of the ESOP as an "employee stock ownership plan" under Section 4975(e)(7) of the Code and the rules and regulations promulgated thereunder; (ii) comply with all requirements of the Code, ERISA and any other law, rule or regulation applicable to it and the ESOP Plan; (iii) provide Administrative Agent and Lenders ten Business Days' prior notice of any proposed amendment to the ESOP or any of the ESOP Plan Documents; (iv) apply all payments received from the ESOP on account of the ESOP Loan solely to the payment of regularly scheduled principal and interest on the ESOP Loan in accordance with the terms of the ESOP Note; (v) except as may otherwise be restricted by this Agreement, make contributions to the ESOP Trust in amounts which, together with any dividends, distributions and contributions paid by Borrowers to the ESOP Trust, are sufficient to enable the ESOP Trust to pay (A) all interest on and principal of the ESOP Note and (B) benefit payment obligations to participants and their beneficiaries, as and when such respective obligations become due; and (vi) provide Administrative Agent and Lenders with at least ten Business Days' prior notice of any proposed waiver or amendment to any of the ESOP Transaction Documents, unless such waiver or amendment is required by Governmental Authority.

(c) Borrowers shall not make any payment of any kind to any tax qualified retirement plan, including but not limited to the ESOP, except as expressly permitted by the Variance Budget or with Administrative Agent's prior written consent.

SECTION 8.13 Reserved.

SECTION 8.14 Visits and Inspections. Permit representatives of the Administrative Agent or any Lender (including, without limitation, any financial advisor or consultant engaged by Administrative Agent or its counsel), from time to time to (a) visit and inspect its properties,

(b) inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants, and (c) discuss with its principal officers, financial advisors, consultants, independent accountants, and other professional advisors, its business, assets, liabilities, financial condition, results of operations and business prospects, with any such visit and/or inspection by Administrative Agent to be at the sole cost and expense of the Borrowers without advance notice. Upon the request of the Administrative Agent or the Required Lenders, Borrowers shall participate in a meeting of the Administrative Agent and Lenders, which meeting will be held at the Borrowers' corporate offices (or such other location as may be agreed to by the Borrowers and the Administrative Agent) at such time as may be agreed by the Borrowers and the Administrative Agent. Borrowers agree to cooperate fully in connection with any field exams, audits, appraisals, or valuations that Administrative Agent may conduct or cause to be conducted at any time, including, without limitation, those performed by any Agent Consultant, and will provide any Agent Consultant with access at all times to all documentation, places of business, officers, the Chief Restructuring Officer, Consultant, any Investment Banker, consultants, and employees of Borrowers and Borrowers' other advisors. Borrowers will promptly provide to any Agent Consultant such financial information concerning the Borrowers' financial, collateral, and operational condition, businesses, assets, liabilities, and prospects as Agent Consultant may request from time to time. Borrowers will reimburse Administrative Agent in cash, upon demand, for any and all fees, costs, expenses, and other charges incurred by Administrative Agent relating to the engagement of any Agent Consultant from time to time (in each case, whether or not included in the Variance Budget or Budget).

SECTION 8.15 Additional Subsidiaries and Real Property.

(a) [Reserved].

(b) [Reserved].

(c) Real Property Collateral. (i) Promptly after the acquisition of any owned real property by any Borrower that is not subject to the existing Security Documents (and, in any event, within ten (10) days after such acquisition, as such time period may be extended by the Administrative Agent in its sole discretion), notify the Administrative Agent and (ii) promptly thereafter (and in any event, within sixty (60) days of such acquisition (as such time period may be extended by the Administrative Agent, in its sole discretion), deliver such mortgages, deeds of trust, title insurance policies, environmental reports, surveys and other documents reasonably requested by the Administrative Agent in connection with granting and perfecting a first priority Lien, other than Permitted Liens, on such real property in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, all in form and substance acceptable to the Administrative Agent. Notwithstanding anything to the contrary contained herein, with respect to any real property acquired by a Borrower on which Administrative Agent will be taking a Lien, (x) the applicable Borrower will give Administrative Agent no less than forty five (45) days' prior written notice of such acquisition, (y) the applicable Borrower may not grant a Lien on such real property in favor of Administrative Agent until the completion of all flood insurance documentation and diligence and coverage in accordance with the Flood Disaster Protection Act of 1973, as amended, by all Lenders, and (z) in the event that any such real property is located in any area that has been designated by the Federal Emergency Management Agency as a "Special

Flood Hazard Area", the applicable Borrower will maintain flood insurance with respect to such real property (including any personal property which is located thereon) complying with the Flood Disaster Protection Act of 1973, as amended from time to time, in an amount satisfactory to all Lenders and otherwise satisfactory to all Lenders.

(d) [Reserved].

(e) Exclusions. The provisions of this Section 8.15 shall not apply to assets as to which the Administrative Agent shall reasonably determine that the costs and burdens of obtaining a security interest therein or perfection thereof outweigh the value of the security afforded thereby.

#### SECTION 8.16 Use of Proceeds.

(a) The Borrowers shall use the proceeds of the Extensions of Credit solely (i) to pay those expenses specifically enumerated in the Variance Budget, solely to the extent set forth therein, as and when such expenses are due and payable, and subject to the terms, limitations, and conditions of this Agreement, (ii) to pay Postpetition Charges, (iii) to refinance the Prepetition Obligations, other than the Specified Prepetition Obligations, (iv) to conduct and pursue a sale process to be completed pursuant to Section 363 of the Bankruptcy Code, subject to the Variance Budget, and (v) to provide payments of "adequate protection" (as set forth in Section 361 of the Bankruptcy Code) in favor of Prepetition Agent and Prepetition Lenders.

(b) For the avoidance of doubt, the Extensions of Credit and proceeds of Collateral shall not be used (i) to repay or prepay any obligations under the Subordinated Loan Documents (including any adequate protection payments) or (ii) in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against Prepetition Agent, Prepetition Lenders, Administrative Agent or the Lenders, except for \$25,000 permitted for investigation costs of the Committees.

SECTION 8.17 Further Assurances. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), which may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Borrowers. The Borrowers also agree to provide to the Administrative Agent, from time to time upon the reasonable request by the Administrative Agent, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

SECTION 8.18 Chief Restructuring Officer. Borrowers will continue to engage a Chief Restructuring Officer on terms and conditions acceptable to Administrative Agent, which shall in all events include and provide for, without limitation, a scope of powers and responsibilities substantially the same as set forth in the CR3 Engagement Agreement. Borrowers hereby do, and will continue to, authorize and instruct the Chief Restructuring Officer

to (a) share with the Administrative Agent and Lenders, among other information, all budgets, records, projections, financial information, reports and other information relating to the Collateral, the financial condition, operations and prospects of Borrowers and their Affiliates, and the sale, marketing or reorganization process of the Borrowers' businesses and assets as requested from time to time and (b) make himself available to Administrative Agent and the Lenders as requested by Administrative Agent and the Lenders from time to time. Borrowers will at all times fully cooperate with the Chief Restructuring Officer and provide the Chief Restructuring Officer complete access to all of the Borrowers' books and records, all of Borrowers' premises and to Borrowers' management. All fees and expenses of the Chief Restructuring Officer shall be solely the responsibility of Borrowers and in no event shall Administrative Agent or any Lender have any obligation, liability or responsibility of any kind or nature whatsoever for the payment of any such fees, expenses or other obligations, nor shall Administrative Agent or any Lender have any obligation or liability to Borrowers, their Affiliates, or any other Person by reason of any acts or omissions whatsoever of the Chief Restructuring Officer at any time.

SECTION 8.19 Consultant. Borrowers will continue to engage a Consultant on terms and conditions acceptable to the Administrative Agent and on the terms and conditions set forth in, or consistent with, the retention order authorizing the continued engagement of the Consultant. Borrowers hereby do, and will continue to, authorize and instruct the Consultant acting through the interim management team furnished to Borrowers, to (a) share with the Administrative Agent and Lenders, among other information, all budgets, records, projections, financial information, reports and other information relating to the Collateral, the financial condition, operations and prospects of Borrowers and their Affiliates, and the sale, marketing or reorganization process of the Borrowers' businesses and assets as requested from time to time and (b) make such persons acting as interim officers of Borrowers available to Administrative Agent and the Lenders as requested by Administrative Agent and the Lenders from time to time. Borrowers will at all times fully cooperate with the Consultant and provide Consultant complete access to all of the Borrowers' books and records, all of Borrowers' premises and to Borrowers' management. All fees and expenses of the Consultant shall be solely the responsibility of Borrowers and in no event shall Administrative Agent or any Lender have any obligation, liability or responsibility of any kind or nature whatsoever for the payment of any such fees, expenses or other obligations, nor shall Administrative Agent or any Lender have any obligation or liability to Borrowers, their Affiliates, or any other Person by reason of any acts or omissions whatsoever of the Consultant at any time.

SECTION 8.20 Investment Banker.

(a) Borrowers shall continue to engage an investment banker (the "Investment Banker") pursuant to a Qualified Investment Banker Engagement and cause the Investment Banker to promptly provide Administrative Agent and Lenders, and their respective agents, advisors, and consultants, with such information, drafts, and reports (including, without limitation, relating to any potential strategic alternatives or transactions), and, upon reasonable prior notice to the Borrowers and the Investment Banker, to make the Investment Banker available for discussions with Administrative Agent and Lenders, and their respective agents, advisors, and consultants, during normal business hours regarding the process for which the Investment Banker was engaged, all as Administrative Agent and Lenders may reasonably



request from time to time. Borrowers may participate in such discussions at the times reasonably designated by Administrative Agent and Lenders pursuant to the immediately preceding sentence, provided that any Borrower's failure to elect to do so will not prevent Administrative Agent or any Lender (or their respective agents, advisors, or consultants) from proceeding with such discussions. The Borrowers shall ensure, as a component of any Qualified Investment Banker Engagement, that the applicable Investment Banker will maintain an appropriate data room to which Administrative Agent and any consultant, financial advisor or counsel engaged by Administrative Agent or its counsel at any time will have unlimited access and review rights at all times. In addition to the foregoing, Administrative Agent, each Lender, and any consultant, financial advisor, or counsel engaged by Administrative Agent or any Lender, or their counsel, at any and all times, will have unlimited access and review rights with respect to any data room (and the information contained therein) maintained by any Investment Banker or Borrower with respect to any actual or contemplated sale of any of the equity interests or assets of any Borrower, any refinancing relating to the Obligations, or any other process for which the Investment Banker was engaged.

(b) Except as otherwise agreed to in writing by Agent, all fees, costs and expenses of the Investment Banker shall be solely the responsibility of Borrowers, and in no event will Administrative Agent or any Lender have any liability or responsibility of any kind with respect to the Investment Banker (including, without limitation, as to the payment of any of the Investment Banker's fees, costs or expenses), and Administrative Agent and Lenders will not have any obligation or liability of any kind or nature to Borrowers, the Investment Banker or any other Person by reason of any acts or omissions of the Investment Banker.

(c) No Borrower shall amend or otherwise modify in any manner the terms of the Investment Banker's engagement with the Borrowers in each case without the prior written consent of the Administrative Agent. In the event that any Investment Banker resigns, is suspended, or has its services modified, or is terminated at any time prior to the consummation of the transaction contemplated by the applicable Qualified Investment Banker Engagement, the Borrowers shall consummate a new Qualified Investment Banker Engagement within ten (10) Business Days after the date on which such Investment Banker resigns, is suspended, or has its services modified, or is terminated.

SECTION 8.21 Sale Covenants. Cause the performance and delivery of the items set forth on Schedule 8.21 on or before the dates specified therein with respect to such items (the "Sale Covenants"), which Sale Covenants pertain to the sale of all, or substantially all, of the assets of Debtors in the Cases on a going concern basis pursuant to Bankruptcy Code § 363, subject to, and in accordance with, all of the terms and conditions of this Agreement and the Financing Orders (the "Sale").

SECTION 8.22 Adequate Protection. As adequate protection for the use of the collateral securing the Prepetition Secured Obligations, including, without limitation, cash collateral (collectively, the "Existing Collateral"), (a) Borrowers shall make payments to the Prepetition Agent and Prepetition Lenders consisting of (i) payments of cash interest on a current basis, calculated at the non-default rate until Paid In Full, and (ii) payments in cash on a current basis of all reasonable fees, costs and expenses of their respective legal counsel (including local counsel) and advisors; provided, however, that all of such fees, costs and expenses provided as

adequate protection payments under this clause (a) shall be paid whether or not the same are included in the Variance Budget or the Budget, and none of such fees, costs and expenses provided as adequate protection payments under this clause (a) shall be subject to approval by the Bankruptcy Court or by the U.S. Trustee, and no recipient of any such payment shall be required to file any interim or final fee application with the Bankruptcy Court in respect of same; provided that the Prepetition Agent shall provide any applicable notice in accordance with the Financing Order; (b) Borrowers agree to provide the Prepetition Agent with replacement liens and a Superpriority Claim pursuant to § 507(b) of the Bankruptcy Code, in each case, to the extent of any post-petition diminution in value of Existing Collateral, subject, in each case and as applicable, to the Carveout; (c) until all Prepetition Secured Obligations and Secured Obligations are Paid In Full, any offers, bids, or consideration for Existing Collateral or Collateral must be for cash; and (d) such other or additional adequate protection shall be provided as the parties may agree to in the Financing Order. The foregoing will be without prejudice to Prepetition Agent's right to later request or otherwise seek additional forms of adequate protection, including additional cash payments.

## ARTICLE IX

### NEGATIVE COVENANTS

Until all of the Obligations have been Paid In Full, the Borrowers will not, and will not permit any of their respective Subsidiaries to.

SECTION 9.1 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except:

- (a) the Secured Obligations and the Prepetition Secured Obligations;
- (b) Indebtedness and obligations owing under Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;
- (c) Indebtedness existing on the Closing Date and listed on Schedule 9.1;
- (d) [Reserved];
- (e) [Reserved];
- (f) Guarantees or Contingent Obligations with respect to Indebtedness permitted pursuant to subsections (a) through (e) of this Section;
- (g) Unsecured intercompany Indebtedness:
  - (i) owed by any Borrower to another Borrower;
  - (ii) owed by any Borrower to any Non-Guarantor Subsidiary (provided that such Indebtedness shall be subordinated to the Obligations in a manner reasonably satisfactory to the Administrative Agent); and

(iii) owed by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary;

(h) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(i) Subordinated Indebtedness of the Borrowers;

(j) the intercompany loan from Hobbico to Revell GmbH under that certain Intercompany Revolving Credit Facility Agreement dated as of May 31, 2017, in an amount not to exceed €13,000,000 in the aggregate and solely to the extent incurred prior to the Filing Date; and

(k) the intercompany loan from Hobbico to Hobbico Germany under that certain Unsecured and Subordinated Mezzanine Loan Facility dated as of February 9, 2012, in an amount not to exceed \$30,000,000 (or the equivalent thereof in any currency other than Dollars) in the aggregate and solely to the extent incurred prior to the Filing Date.

SECTION 9.2 Liens. Create, incur, assume or suffer to exist, any Lien on or with respect to any of its Property, whether now owned or hereafter acquired, except:

(a) Liens created pursuant to the Loan Documents (including, without limitation, Liens in favor of the Swingline Lender and/or the Issuing Lenders, as applicable, on Cash Collateral granted pursuant to the Loan Documents) and Liens created pursuant to the Prepetition Loan Documents (including, without limitation, Liens in favor of the "Swingline Lender" under the Prepetition Credit Agreement and/or the "Issuing Lenders" under the Prepetition Credit Agreement, as applicable, on "Cash Collateral" under the Prepetition Credit Agreement granted pursuant to the Prepetition Loan Documents);

(b) Liens in existence on the Closing Date and described on Schedule 9.2;

(c) Liens for taxes, assessments and other governmental charges or levies (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) (i) not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(d) the claims of carriers incurred in the ordinary course of business, which (i) are not overdue for a period of more than thirty (30) days, or if more than thirty (30) days overdue, no action has been taken to enforce such Liens and such Liens are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP and (ii) do not, individually or in the aggregate, materially impair the use of the assets subject to such claims in the operation of the business of the Borrowers or any of their Subsidiaries;

(e) deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and

other types of social security or similar legislation, so long as no foreclosure sale or similar proceeding has been commenced with respect to any portion of the Collateral on account thereof;

(f) encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not substantial in amount and which do not, in any case, detract from the value of such property or impair the use thereof in the ordinary conduct of business;

(g) Liens arising from the filing of precautionary UCC financing statements relating solely to personal property leased pursuant to operating leases entered into in the ordinary course of business of the Borrowers and their Subsidiaries;

(h) Liens securing Indebtedness permitted under Section 9.1(d); provided that (i) such Liens shall be created substantially simultaneously with the acquisition, repair, improvement or lease, as applicable, of the related Property, (ii) such Liens do not at any time encumber any property other than the Property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original price for the purchase, repair improvement or lease amount (as applicable) of such Property at the time of purchase, repair, improvement or lease (as applicable);

(i) [reserved];

(j) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depository bank in connection with statutory, common law and contractual rights of set-off and recoupment with respect to any deposit account of the Borrowers or any Subsidiaries thereof;

(k) contractual Liens of suppliers (including sellers of goods) granted in the ordinary course of business to the extent limited to the property or assets relating to such contract;

(l) any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any license or lease agreement entered into in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrowers and their Subsidiaries or materially detract from the value of the relevant assets of the Borrowers and their Subsidiaries or (ii) secure any Indebtedness;

(m) Permitted Priority Liens;

(n) Liens permitted under the Final Order; and

(o) Liens made in favor of the Subordinated Lenders in connection with the Subordinated Loan.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Borrower shall, and shall not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien with priority over the Liens created by the Loan Documents, except the Permitted Priority Liens and Liens created pursuant to certain of the

Prepetition Loan Documents. Any such Lien violating this requirement is *per se* not a Permitted Lien.

SECTION 9.3 Investments. Purchase, own, invest in or otherwise acquire (in one transaction or a series of transactions), directly or indirectly, any Equity Interests, interests in any partnership or joint venture (including, without limitation, the creation or capitalization of any Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other investment or interest whatsoever in any other Person, or make or permit to exist, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of Property in, any Person (all the foregoing, "Investments") except:

(a) Investments existing on the Closing Date in Subsidiaries existing on the Closing Date;

(b) Investments existing on the Closing Date (other than Investments in Subsidiaries existing on the Closing Date) and described on Schedule 9.3;

(c) Investments made after the Closing Date by any Borrower existing on the Closing Date in any other Borrower existing on the Closing Date;

(d) Investments made after the Closing Date by any Non-Guarantor Subsidiary existing on the Closing Date in any other Non-Guarantor Subsidiary existing on the Closing Date;

(e) Investments made after the Closing Date by any Non-Guarantor Subsidiary existing on the Closing Date in any Borrower existing on the Closing Date;

(f) Investments in cash and Cash Equivalents;

(g) ownership of stock, obligations or securities received in settlement of debts (created in the ordinary course of business) owing to any Borrower;

(h) Investments by the Borrowers or any of their Subsidiaries consisting of Capital Expenditures permitted by this Agreement;

(i) endorsement of negotiable instruments for collection in the ordinary course of business;

(j) deposits made in the ordinary course of business to secure the performance of leases or other obligations as permitted by Section 9.2;

(k) Hedge Agreements permitted pursuant to Section 9.1;

(l) purchases of assets in the ordinary course of business;

(m) [reserved];

- (n) [reserved];
- (o) Investments in the form of Restricted Payments permitted pursuant to Section 9.6;
- (p) Guarantees permitted pursuant to Section 9.1; and
- (q) The ESOP Loan (provided that Hobbico shall not permit or accept any prepayment of the ESOP Loan except with respect to any excess funds resulting from contributions required to comply with the "Safe Harbor Contribution" requirements of Section 3.2 of the ESOP Plan as in effect on the Closing Date).

For purposes of determining the amount of any Investment outstanding for purposes of this Section 9.3, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

SECTION 9.4 Fundamental Changes. Merge, consolidate or enter into any similar combination with, or enter into any Asset Disposition of all or substantially all of its assets (whether in a single transaction or a series of transactions) with, any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except for pursuant to a confirmed chapter 11 plan of reorganization or a Sale Order, provided that the terms and conditions are satisfactory to Administrative Agent and the Lenders in their sole discretion.

SECTION 9.5 Asset Dispositions. Make any Asset Disposition except:

- (a) the sale of obsolete, worn-out or surplus assets no longer used or usable in the business of any Borrower or any of its Subsidiaries;
- (b) non-exclusive licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering, individually or in the aggregate, in any respect with the conduct of the business of any Borrowers and their Subsidiaries;
- (c) leases, subleases, licenses or sublicenses of real or personal property granted by any Borrower or any of its Subsidiaries to others in the ordinary course of business not detracting from the value of such real or personal property or interfering in any material respect with the business of any Borrower or any of its Subsidiaries;
- (d) Asset Dispositions in connection with Insurance and Condemnation Events; provided that the requirements of Section 4.4(b) are complied with in connection therewith;
- (e) Assets Dispositions in connection with transactions permitted by Section 9.4;
- (f) transfers of Inventory not in the ordinary course of Borrowers' business in an aggregate amount up to, but not exceeding, \$100,000 per week unless otherwise agreed to in writing by the Administrative Agent (provided, however, that any such dispositions of inventory that are consented to pursuant to this subclause (f) that exceed \$500,000 in any week shall require the written agreement of the Administrative Agent and Required Lenders); and

(g) sale of foreign accounts receivable through a non-recourse receivable factoring program at any Foreign Subsidiary.

SECTION 9.6 Restricted Payments. Declare or pay any dividend on, or make any payment or other distribution on account of, or purchase, redeem, retire or otherwise acquire (directly or indirectly), or set apart assets for a sinking or other analogous fund for the purchase, redemption, retirement or other acquisition of, any class of Equity Interests of any Borrower or any Subsidiary thereof, or make any distribution of cash, property or assets to the holders of shares of any Equity Interests of any Borrower or any Subsidiary thereof (all of the foregoing, the "Restricted Payments"); provided that:

(a) any Subsidiary of any Borrower may pay cash dividends to any Borrower; and

(b) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may make Restricted Payments to any other Non-Guarantor Subsidiary.

SECTION 9.7 Transactions with Affiliates. Directly or indirectly enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with (a) any officer, director, holder of any Equity Interests in, or other Affiliate of, any Borrower or any of their Subsidiaries or (b) any Affiliate of any such officer, director or holder, other than as expressly contemplated by the Variance Budget and other than transactions by and among Borrowers.

SECTION 9.8 Accounting Changes; Organizational Documents.

(a) Change its Fiscal Year end, or make (without the consent of the Administrative Agent) any material change in its accounting treatment and reporting practices except (i) as required by GAAP or (ii) as Hobbico's independent auditor may recommend.

(b) Amend, modify or change its articles of incorporation (or corporate charter or other similar organizational documents) or amend, modify or change its bylaws (or other similar documents) in any manner materially adverse to the rights or interests of the Lenders.

SECTION 9.9 Modifications of Subordinated Indebtedness. Amend, modify, waive or supplement (or permit the modification, amendment, waiver or supplement of) any of the terms or provisions of any Subordinated Indebtedness in any respect would adversely affect the rights or interests of the Administrative Agent and the Lenders.

SECTION 9.10 No Further Negative Pledges; Restrictive Agreements.

(a) Enter into, assume or be subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 9.1(d) (provided that any such restriction contained therein relates only to the asset or assets financed thereby), (iii) customary restrictions contained in the organizational

documents of any Non-Guarantor Subsidiary as of the Closing Date and (iv) customary restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien).

(b) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Borrower or any Subsidiary thereof to (i) pay dividends or make any other distributions to any Borrower or any Subsidiary on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Borrower or (iii) make loans or advances to any Borrower, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents and (B) Applicable Law.

(c) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Borrower or any Subsidiary thereof to (i) sell, lease or transfer any of its properties or assets to any Borrower or (ii) act as a Borrower pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) Applicable Law, (C) any document or instrument governing Indebtedness incurred pursuant to Section 9.1(d) (provided that any such restriction contained therein relates only to the asset or assets acquired in connection therewith), (D) any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (E) [reserved], (F) customary restrictions contained in an agreement related to the sale of Property (to the extent such sale is permitted pursuant to Section 9.5) that limit the transfer of such Property pending the consummation of such sale, (G) customary restrictions in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such restrictions relate only to the assets subject thereto and (H) customary provisions restricting assignment of any agreement entered into in the ordinary course of business.

**SECTION 9.11 Nature of Business.** Engage in any business other than the business conducted by the Borrowers and their Subsidiaries as of the Closing Date and business activities reasonably related or ancillary thereto or that are reasonable extensions thereof.

**SECTION 9.12 Rental Agreements.** Permit the aggregate amount of all Rentals made (or scheduled to be made) by the Borrowers (on a consolidated basis) to exceed \$6,000,000 net in any Fiscal Year.

**SECTION 9.13 Sale Leasebacks.** Directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which any Borrower or any Subsidiary thereof has sold or transferred or is to sell or transfer to a Person which is not another Borrower or Subsidiary of a Borrower or (b) which any Borrower or any Subsidiary of a Borrower intends to use for substantially the same purpose as any other Property that has been sold or is to be sold or transferred by such



Borrower or such Subsidiary to another Person which is not another Borrower or Subsidiary of a Borrower in connection with such lease.

SECTION 9.14 S Corporation. No Borrower, nor any shareholder thereof, shall take or allow any action that would result in the termination of any Borrower's status as a validly electing S corporation within the meaning of Sections 1361 and 1362 of the Code.

SECTION 9.15 Executive Compensation. The compensation (including, without limitation, all salaries and bonuses) of all executives and key senior employees of Borrowers shall be set forth in the Variance Budget and the Budget, and shall only be adjusted to the extent agreed to in writing by Administrative Agent.

SECTION 9.16 [Reserved].

SECTION 9.17 Financial Covenant - Variance.

(a) measured as of January [ ], 2018 and the last day of each week thereafter, permit the aggregate amount of the actual disbursements (including, without limitation, all transfers, distributions, dividends, contributions or other payments) of the type set forth in the line item entitled "Total Operating Cash Disbursements" in the accepted thirteen-week cash flow forecast under the Variance Budget for the immediately preceding four-week period to exceed one hundred ten percent (110%) of the budgeted amount set forth in the line item entitled "Total Operating Cash Disbursements" in the accepted thirteen-week cash flow forecast under the Variance Budget for such period;

(b) measured as of January [ ], 2018 and the last day of each week thereafter, permit the aggregate amount of the actual disbursements (including, without limitation, all transfers, distributions, dividends, contributions or other payments) of the type set forth in the line item entitled "Total Non-Operating Cash Disbursements" in the accepted thirteen-week cash flow forecast under the Variance Budget for the immediately preceding four-week period to exceed one hundred five percent (105%) of the budgeted amount set forth in the line item entitled "Total Non-Operating Cash Disbursements" in the accepted thirteen-week cash flow forecast under the Variance Budget for such period;

(c) measured as of January [ ], 2018 and the last day of each week thereafter, permit the aggregate amount of the actual receipts of the type set forth in the line item entitled "Total Operating Receipts" in the accepted thirteen-week cash flow forecast under the Variance Budget for the immediately preceding four-week period to be less than eighty-five percent (85%) of the budgeted amount set forth in the item entitled "Total Operating Receipts" in the accepted thirteen-week cash flow forecast under the Variance Budget for such period;

provided, that with respect to the foregoing, to the extent such four-week period includes periods prior to the date hereof, the budgeted amounts for such periods shall be in accordance with the budgets attached hereto as Schedule 9.17.

SECTION 9.18 Contingent Obligations. No Borrower will, nor will any Borrower permit any Subsidiary to, make or suffer to exist any Guaranty or other Contingent Obligation (including any Contingent Obligation with respect to the obligations of a Subsidiary), except

(i) by endorsement of instruments for deposit or collection in the ordinary course of business, (ii) the L/C Obligations, (iii) the Guaranty by a Borrower of the Obligations of a Wholly-Owned Subsidiary of such Borrower if such Obligation would be permitted to be incurred by such Borrower directly hereunder, and (iv) the Guaranty of Indebtedness owing to the Lenders pursuant to that certain guaranty agreement, dated February 10, 2012 executed by Arma Durango and that certain guaranty agreement, dated February 13, 2012 by Hobbico Germany.

SECTION 9.19 Financing Order; Administrative Expense Priority; Payments. No Borrower will, nor will any Borrower permit any Subsidiary to:

(a) seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Financing Order, except for modifications and amendments joined in or agreed to in writing by Administrative Agent;

(b) seek the use of "Cash Collateral" (as defined in the Financing Order) in a manner inconsistent with the terms of the Financing Order without the prior written consent of Administrative Agent;

(c) suffer to exist at any time a priority for any administrative expense or unsecured claim against any Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in Sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code) or any super priority claim which is equal or superior to the priority of the Administrative Agent or the Lenders in respect of the Obligations or the Prepetition Agent and the Prepetition Secured Parties in respect of the Prepetition Secured Obligations, except for the amounts having a priority over the Obligations to the extent set forth in the definition of Carveout or Permitted Priority Liens;

(d) directly or indirectly seek, consent or suffer to exist at any time any Lien with priority over the Liens created by the Loan Documents or the Prepetition Loan Documents on any properties, assets or rights except for Permitted Priority Liens;

(e) make or commit to make payments to "critical vendors" (as such term is customarily used) in respect of pre-petition amounts during the term of the DIP Facility in excess of the amount contemplated by the Variance Budget; or

(f) prior to the date on which the Secured Obligations and Prepetition Secured Obligations have been Paid In Full, pay any administrative expenses, except administrative expenses incurred in the ordinary course of the business of Borrowers and set forth in the Variance Budget, in each case subject to the extent and having the order of priority set forth in the definition of Carveout.

Notwithstanding the foregoing, the Borrowers shall be permitted to pay as the same may become due and payable (i) administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code incurred in the ordinary course of business and to the extent otherwise authorized under the Financing Order, the Variance Budget and this Agreement and (ii) compensation and reimbursement of expenses to professionals allowed and payable under Sections 330 and 331 of the Bankruptcy Code to the extent permitted by the Financing Order and set forth in the Variance Budget.

## ARTICLE X

### DEFAULT AND REMEDIES

SECTION 10.1 Events of Default. Each of the following shall constitute an Event of Default:

(a) Default in Payment of Principal of Loans and Reimbursement Obligations. The Borrowers shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise).

(b) Other Payment Default. The Borrowers shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation and such default shall continue for a period of three (3) Business Days.

(c) Misrepresentation. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any Subsidiary thereof in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any Subsidiary thereof in this Agreement, any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made.

(d) Default in Performance of Certain Covenants. Any Borrower shall default in the performance or observance of any covenant or agreement contained in the Financing Order, Sections 8.3, 8.6, 8.14, 8.16, 8.18, 8.19, 8.20, 8.21, 8.22 or Article IX.

(e) Default in Performance of Other Covenants and Conditions. Any Borrower or any Subsidiary thereof shall (x) default in the performance or observance of any covenant or agreement contained in Sections 8.1 or 8.2 and such default shall continue for a period of three (3) days after the date of such default or (y) default in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than as specifically provided for in this Section 10) or any other Loan Document and such default shall continue for a period of fifteen (15) days after the earlier of (i) the Administrative Agent's delivery of written notice thereof to the Borrowers and (ii) a Responsible Officer of any Borrower having obtained knowledge thereof or, if such default or nonperformance is capable of being cured but within a longer period, for more than fifteen (15) days after such Borrower commences active attempts to cure (provided such Borrower in fact commences active attempts to cure in good faith within the initial fifteen-day period).

(f) Indebtedness Cross-Default. Other than as a result of the Cases, any Borrower or any Subsidiary thereof shall (i) default in the payment of any Material Indebtedness (including Subordinated Indebtedness) or (ii) default in the observance or performance of any other

agreement or condition relating to any Material Indebtedness (including Subordinated Indebtedness) or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders (or a trustee or agent on behalf of such holder or holders) of such Material Indebtedness (including Subordinated Indebtedness) to cause, with the giving of notice and/or lapse of time, if required, any such Material Indebtedness (including Subordinated Indebtedness) to become due prior to its stated maturity (any applicable grace period having expired).

(g) [Reserved].

(h) Change in Control. Any Change in Control shall occur.

(i) [Reserved].

(j) [Reserved].

(k) Condemnation. Any court, government or governmental agency shall condemn, seize or otherwise appropriate, or take custody or control of, all or any portion of the Property of Borrowers or any Subsidiary which, when taken together with all other Property of Borrowers and their Subsidiaries so condemned, seized, appropriated, or taken custody or control of, during the twelve-month period ending with the month in which any such action occurs, constitutes a Substantial Portion.

(l) ERISA Events. The occurrence of any of the following events: (i) any Borrower or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Sections 412 or 430 of the Code, any Borrower or any ERISA Affiliate is required to pay as contributions thereto and such unpaid amounts are in excess of \$750,000, (ii) a Termination Event or (iii) any Borrower or any ERISA Affiliate as employers under one or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and the plan sponsor of such Multiemployer Plans notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount exceeding \$750,000.

(m) Judgments. After the Filing Date, (i) any judgment or order shall be entered with respect to any Borrower or any Subsidiary for the payment of money in excess of \$100,000 (or the equivalent thereof in currencies other than Dollars) in the aggregate, or (ii) any nonmonetary judgment or order shall be entered with respect to any Borrower or any Subsidiary which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(n) Environmental Laws. Any Borrower shall (i) be the subject of any proceeding or investigation pertaining to the release by any Borrower or any other Person of any toxic or hazardous waste or substance into the environment, or (ii) violate any Environmental Law, which, in the case of an event described in clause (i) or clause (ii), could reasonably be expected to have a Material Adverse Effect.

(o) ESOP. The ESOP Transactions are determined to be a "prohibited transaction" under Section 4975 of the Code and/or Section 406 of ERISA (for which a prohibited transaction

exemption is not applicable) or a subsequent "prohibited transaction" involving the ESOP occurs (for which a prohibited transaction exemption is not applicable).

(p) Excise Tax. An excise tax is imposed against any Borrower as a result of a violation of the requirements set forth in Section 409(p) of the Code.

(q) S Corporation. Any Borrower ceases to be a validly electing S corporation (within the meaning of Section 1361(a)(1) of the Code and under analogous state and local laws) or takes any action that results or could result in the termination of any Borrower's status as an S corporation within the meaning of Section 1361(a)(1) of the Code.

(r) Material Adverse Tax Consequences. The adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, which results in (i) the termination of any Borrower's status as an S corporation within the meaning of Section 1361(a)(1) of the Code, or (ii) any materially adverse tax consequences to any Borrower as determined in Administrative Agent's reasonable discretion.

(s) Chief Restructuring Officer. (i) If the Chief Restructuring Officer is terminated or disqualified for any reason and Borrowers have not appointed a replacement Chief Restructuring Officer acceptable to Administrative Agent within five (5) Business Days thereafter, (ii) the terms of the Chief Restructuring Officer's engagement by Borrowers are modified in any manner not acceptable to Administrative Agent, (iii) the Chief Restructuring Officer is instructed to cease working, (iii) the Chief Restructuring Officer's engagement by Borrowers, or any of the responsibilities, authority, powers, or duties of the Chief Restructuring Officer, is terminated, suspended, or restricted in any respect, or (iv) the Chief Restructuring Officer resigns and Borrowers have not engaged a replacement Chief Restructuring Officer acceptable to the Administrative Agent within five (5) Business Days thereafter.

(t) Consultant. (i) If the Consultant is terminated or disqualified for any reason and Borrowers have not engaged a replacement Consultant acceptable to Administrative Agent within five (5) Business Days thereafter, (ii) the terms of the Consultant's engagement by Borrowers are modified in any manner not acceptable to Administrative Agent, (iii) the Consultant is instructed to cease working, (iii) the Consultant's engagement by Borrowers, or any of the responsibilities, authority, powers, or duties of the Consultant, is terminated, suspended, or restricted in any respect, or (iv) the Consultant resigns and Borrowers have not engaged a replacement Consultant acceptable to the Administrative Agent within five (5) Business Days.

(u) Bankruptcy Defaults. Any of the following shall occur:

(i) the Final Order is not entered within thirty (30) days following the Filing Date in form and substance satisfactory to Administrative Agent;

(ii) the Interim Order or Final Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified in any manner not acceptable to the Administrative Agent;

(iii) the Debtors shall file a pleading seeking to modify or otherwise alter the Interim Order, the Final Order, any Loan Document, any Prepetition Loan Document or any of the transactions contemplated in any of the foregoing without the prior consent of Administrative Agent;

(iv) an order with respect to any of the Cases shall be entered by the Bankruptcy Court (A) appointing a trustee under Section 1104, or an examiner with enlarged powers relating to the operation of the business of any Debtor under Section 1106(b) of the Bankruptcy Code or (B) terminating or shortening any Debtor's exclusive rights to file and solicit acceptances for its plan;

(v) (i) Administrative Agent, any Secured Party, Prepetition Agent, any Prepetition Secured Party or any Collateral securing the Secured Obligations or Prepetition Secured Obligations are surcharged pursuant to Sections 105, 506(c) or 552 or any other section of the Bankruptcy Code, or (ii) any person or entity other than a Debtor shall assert any claim in the any of the Bankruptcy Cases arising under Sections 105, 506(c) or 552 or any other section of the Bankruptcy Code against Administrative Agent, any Secured Party, Prepetition Agent, any Prepetition Secured Party or the Collateral, and such claim shall not be dismissed or withdrawn, with prejudice, within 10 days after the assertion thereof;

(vi) any person or entity other than a Debtor shall commence any action in any of the Cases adverse to Administrative Agent, any Secured Party, Prepetition Agent or any Prepetition Secured Party, the extent, validity, perfection, enforceability or priority of any of their Liens or claims, or any of their rights and remedies under the Loan Documents, the Prepetition Loan Documents, the Financing Orders or any other order of the Bankruptcy Court and such claim shall not be dismissed or withdrawn, with prejudice, within 10 days after the assertion thereof;

(vii) (i) any Debtor shall attempt to invalidate, reduce or otherwise impair the liens or security interests of Administrative Agent and the Secured Parties, claims or rights against Debtors or any of their Subsidiaries or to subject any Collateral to assessment pursuant to Section 105, 506(c), 552 or any other section of the Bankruptcy Code, (ii) any lien, security interest or superpriority claim created by this Agreement, the Loan Documents, the Prepetition Credit Agreement, the Prepetition Loan Documents or any Financing Order shall, for any reason, cease to be valid, (iii) any action is commenced by any Debtor or any of its Subsidiaries which contests the extent, validity, perfection, enforceability or priority of any of the liens and security interests of Administrative Agent, Prepetition Agent, the Secured Parties or Prepetition Secured Parties created by this Agreement, the Loan Documents, the Prepetition Credit Agreement, the Prepetition Loan Documents or any Financing Order or (iv) any Debtor or any Subsidiary of any Debtor challenges the extent, validity, enforceability, amount, or priority of any of the Secured Obligations or the Prepetition Secured Obligations or the application of any payments or collections received by Administrative Agent, Secured Parties, Prepetition Agent, or Prepetition Secured Parties to the Secured Obligations or Prepetition Secured Obligations as provided for herein or in any Financing Order;

(viii) (i) any filing of a motion by any Debtor to dismiss any of the Cases or to convert any of the Cases to a case under chapter 7 of the Bankruptcy Code or (ii) an order with respect to any of the Cases shall be entered by the Bankruptcy Court dismissing any of the Cases or converting any of the Cases (or any case comprising part of any of the Cases) to a case under chapter 7 of the Bankruptcy Code;

(ix) any motion, supplement, amendment or other document relating to any Financing Order, this Agreement, the Prepetition Credit Agreement or the transactions contemplated in any of the foregoing that is not in form in substance satisfactory to Administrative Agent is filed by any Debtor or entered by the Bankruptcy Court;

(x) any sale of, or motion to sell Collateral is pursuant to Section 363 of the Bankruptcy Code is filed, to which the Administrative Agent does not consent unless all of the Secured Obligations and Prepetition Secured Obligations are Paid in Full as a result of such sale;

(xi) an order with respect to any of the Cases shall be entered without the express prior written consent of the Administrative Agent, (i) to revoke, vacate, reverse, stay, modify, supplement or amend this Agreement, the Prepetition Credit Agreement, any Loan Document, any Prepetition Loan Document, any Financing Order, or the transactions contemplated in any of the foregoing, or (ii) to permit any administrative expense, claim or lien (now existing or hereafter arising, of any kind or nature whatsoever) to have priority equal or superior to the priority of the Administrative Agent, the Prepetition Agent, Secured Parties and Prepetition Secured Parties in respect of any of the Secured Obligations or any of the Prepetition Secured Obligations, except for the amounts having a priority over such obligations to the extent set forth in the definition of Carveout or as provided in the Financing Order;

(xii) an order shall be entered by the Bankruptcy Court granting relief from the automatic stay to any creditor(s) owed in excess of \$25,000 of any Debtor or any Subsidiary of any Debtor;

(xiii) unless approved by the Administrative Agent in writing, any plan of reorganization is filed that, or an order shall be entered by the Bankruptcy Court confirming a reorganization plan in any of the Cases which, does not (i) contain a provision that all Secured Obligations and all Prepetition Secured Obligations shall be Paid In Full in a manner satisfactory to the Administrative Agent on or before the effective date, or substantial consummation, of such plan and (ii) provide for the continuation of the liens and security interests granted to the Administrative Agent and priorities until such plan effective date all Secured Obligations and Prepetition Secured Obligations are Paid In Full;

(xiv) a motion shall be filed by any Debtor seeking authority, or an order shall be entered in any of the Cases, that (i) permits any Debtor or any Subsidiary of any Debtor to incur indebtedness secured by any claim under Bankruptcy Code Section 364(c)(1) or by a Lien pari passu with or superior to the lien granted under the Loan Documents and the Prepetition Loan Documents and Bankruptcy Code Sections

364(c)(2) or (d), unless (A) all of the Secured Obligations and Prepetition Secured Obligations have been Paid In Full at the time of the entry of any such order, or (B) the Secured Obligations and the Prepetition Secured Obligations are Paid In Full with such indebtedness, or (ii) permits any Debtor or any Subsidiary of any Debtor the right to use Collateral other than in accordance with the terms of any Financing Order, unless all of the Secured Obligations and Prepetition Secured Obligations shall have been Paid In Full;

(xv) proceeds of any sale of all or substantially all assets of any Debtor are not directly remitted to Administrative Agent at the closing thereof;

(xvi) any motions shall be filed by any Debtor or any Affiliate or "insider" of any Debtor or any order is issued to approve any severance, retention or incentive plan or program for employees that is not in accordance with the Variance Budget and is otherwise not in form and substance acceptable to Administrative Agent;

(xvii) any motions shall be filed by any Debtor or any Affiliate or "insider" of any Debtor or any order is issued to sell Collateral or approve procedures regarding the same, or any orders approving or amending any of the foregoing, are not in form and substance acceptable to Administrative Agent;

(xviii) the automatic stay terminates or expires (except with respect to any creditor(s) owed less than \$25,000) unless all of the Secured Obligations and Prepetition Secured Obligations shall have been Paid In Full at the time of such termination or expiration;

(xix) payment of or granting adequate protection with respect to any indebtedness that was existing prior to the Filing Date (other than as provided herein or as approved by Administrative Agent);

(xx) any Debtor or any Subsidiary of any Debtor shall fail to maintain sufficient projected borrowing capacity under this Agreement to pay all accrued administrative obligations and other administrative claims when due, and sufficient additional borrowing capacity to enable such other unpaid administrative obligations and administrative claims that are required to be Paid In Full prior to such time that all Secured Obligations and Prepetition Secured Obligations are Paid In Full; or

(xxi) the occurrence of any "Event of Default" (as defined in the Financing Order) under the Financing Order.

SECTION 10.2 Remedies. Notwithstanding Bankruptcy Code § 364 and without further order of the Bankruptcy Court, upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrowers:

(a) Acceleration; Termination of Credit Facility. Terminate all or any portion of the Revolving Credit Commitments or declare all or any portion of the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all or any portion of



the other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents (including, without limitation, all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all or any portion of the other Obligations, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Borrower, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any rights of the Borrowers to request borrowings or Letters of Credit thereunder.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, the Borrowers shall at such time deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Secured Obligations on a pro rata basis. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligation shall have been satisfied and all other Secured Obligations shall have been Paid In Full, the balance, if any, in such Cash Collateral account shall be returned to the Borrowers.

(c) General Remedies. Exercise on behalf of the Secured Parties all of its other rights and remedies under this Agreement, the other Loan Documents, the Financing Orders and Applicable Law, in order to satisfy all of the Secured Obligations.

### SECTION 10.3 Rights and Remedies Cumulative; Non-Waiver; etc.

(a) The enumeration of the rights and remedies of the Administrative Agent and the Lenders set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing among the Borrowers, the Administrative Agent and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrowers or any of them shall be vested exclusively in, and all actions

and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.2 for the benefit of all the Lenders and the Issuing Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 12.4 (subject to the terms of Section 5.6), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.2 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 5.6, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**SECTION 10.4 Crediting of Payments and Proceeds.** During the continuance of an Event of Default, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall be applied by the Administrative Agent to the Secured Obligations in such manner and in such order as Administrative Agent or the Required Lenders may elect, in each case, ratably among the Secured Parties holding such applicable Class of Loans or other portion of the Secured Obligations. (x) In the event that the Obligations have been accelerated pursuant to Section 10.2 or (y) during the continuance of an Event of Default, upon the election by Administrative Agent or the Required Lenders, and in either case subject to the terms of the Financing Order and Section 2.7, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall be applied by the Administrative Agent as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such, the Issuing Lenders in their capacity as such and the Swingline Lender in its capacity as such, ratably among the Administrative Agent, the Issuing Lenders and Swingline Lender in proportion to the respective amounts described in this clause First payable to them, until Paid In Full;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them, until Paid In Full;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid interest on the Loans and Reimbursement Obligations, ratably

among the Lenders in proportion to the respective amounts described in this clause Third payable to them, until Paid In Full;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and payment obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Issuing Lenders, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth payable to them, until Paid In Full;

Fifth, to the Administrative Agent for the account of the Issuing Lenders, to Cash Collateralize any L/C Obligations then outstanding; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly Paid In Full, to the Borrowers or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XI for itself and its Affiliates as if a "Lender" party hereto. For purposes of this Section 10.4, Paid In Full of a type of Secured Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Secured Obligation, including interest accrued after the commencement of the Cases, or any other insolvency proceeding (including, without limitation, under any Debtor Relief Law), default interest, interest on interest, and expense reimbursements, fees, costs and other charges, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any insolvency proceeding.

In the event that the Lenders are required to repay or disgorge to Borrowers or any representatives of the Borrowers' estate (as agents, with derivative standing or otherwise) all or any portion of the Prepetition Secured Obligations authorized and directed to be repaid pursuant to a Financing Order, or any payment on account of the Prepetition Secured Obligations made to any Secured Party is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of any applicable Bankruptcy Code or any applicable state or provincial law, or any other similar provisions under any other state, federal or provincial statutory or common law (all such amounts being hereafter referred to as the "Avoided Payments"), then, in such event, Borrowers shall promptly (but in any event within one (1) Business Day of such receipt by Borrowers or any representative of the Borrowers' estate) prepay, in an amount equal to 100% of such Avoided Payments, the outstanding principal amount of the Revolving Credit Loans, other than Roll-up Revolving Loans.

SECTION 10.5 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lenders and the Administrative Agent under Sections 3.3, 5.3 and 12.3) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.3, 5.3 and 12.3.

SECTION 10.6 Credit Bidding.

(a) The Administrative Agent, on behalf of itself and the Lenders, shall have the right to credit bid and purchase for the benefit of the Administrative Agent and the Lenders all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Applicable Law.

(b) Each Lender hereby agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

## ARTICLE XI

### THE ADMINISTRATIVE AGENT

#### SECTION 11.1 Appointment and Authority.

(a) Each of the Lenders and each Issuing Lender hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and neither the Borrowers nor any Subsidiaries thereof shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Borrowers to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto (including, without limitation, to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Secured Parties). In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article XI for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of Articles XI and XII (including Section 12.3, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 11.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 11.3 Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.2 and Section 10.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrowers, a Lender or an Issuing Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith (including, without limitation, any report provided to it by an Issuing Lender pursuant to Section 3.9), (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition

set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vi) the utilization of any Issuing Lender's L/C Commitment (it being understood and agreed that each Issuing Lender shall monitor compliance with its own L/C Commitment without any further action by the Administrative Agent).

SECTION 11.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 11.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub agents.

SECTION 11.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers and subject to the consent of the Borrowers (provided no Event of Default has occurred and is continuing at the time of such resignation), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation

(or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrowers and such Person, remove such Person as Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed among the Borrowers and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 12.3 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, if in its sole discretion it elects to, and Swingline Lender, (b) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for



the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

SECTION 11.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 11.8 [Reserved].

SECTION 11.9 Collateral and Guaranty Matters.

(a) Each of the Lenders (including in its or any of its Affiliate's capacities as a potential Hedge Bank or Cash Management Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent, for the ratable benefit of the Secured Parties, under any Loan Document (A) upon the Payment In Full of all Secured Obligations, (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Loan Documents, or (C) if approved, authorized or ratified in writing in accordance with Section 12.2;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien permitted pursuant to Section 9.2(h); and

(iii) to release any guarantor from its obligations under any Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any guarantor from its obligations under the Subsidiary Guaranty Agreement pursuant to this Section 11.9. In each case as specified in this Section 11.9, the Administrative Agent will, at the Borrowers' expense, execute and deliver to the applicable Borrower such documents as such Borrower may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such guarantor from its obligations under the Subsidiary Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 11.9. In the case of any such sale, transfer or

disposal of any property constituting Collateral in a transaction constituting an Asset Disposition permitted pursuant to Section 9.5, the Liens created by any of the Security Documents on such property shall be automatically released without need for further action by any person.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Borrower in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 11.10 Secured Hedge Agreements and Secured Cash Management Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 10.4 or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article XI to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Secured Cash Management Agreements and Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. All Assumed Prepetition Secured Obligations shall be deemed to have been incurred pursuant hereto and assumed by the Borrowers hereunder, and shall be subject to and governed by the terms and conditions hereof. Each Cash Management Bank and each Hedge Bank hereby assumes and agrees to perform any and all duties, obligations and liabilities to be performed or discharged by it hereunder in respect of such Prepetition Secured Obligations and such Prepetition Secured Obligations shall be deemed to be refinanced hereby. Borrowers agree to execute and deliver such documentation, if any, requested by Administrative Agent, or a Cash Management Bank or Hedge Bank, as applicable, to evidence, record, or further the foregoing deemed assumption, incurrence and refinance.

## ARTICLE XII

### MISCELLANEOUS

#### SECTION 12.1 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrowers:

c/o Hobbico, Inc.  
2904 Research Rd.  
Champaign, IL 61822  
Attention of: Willard Muirheid  
Telephone No.: (217) 398-3630  
Facsimile No.: (217) 398-0008  
E-mail: [wkm@hobbico.com](mailto:wkm@hobbico.com)

With copies to:

Morris, Nichols, Arsht & Tunnell LLP  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
Telephone No.: (302) 658-9200  
Facsimile No.: (302) 658-3989  
Attention of: Robert J. Dehney ([rdehney@mnat.com](mailto:rdehney@mnat.com))  
Curtis S. Miller ([cmiller@mnat.com](mailto:cmiller@mnat.com))

If to Wells Fargo as Administrative Agent:

Wells Fargo Bank, National Association  
90 South 7th Street  
16th Floor  
Minneapolis, MN 55402  
Attention of: Casey Kelly  
Telephone No.: (612) 316-1853  
Facsimile No.: (612) 316-1491  
E-mail: [casey.p.kelly@wellsfargo.com](mailto:casey.p.kelly@wellsfargo.com)

With copies to:

Wells Fargo Bank, National Association  
One Wells Fargo Center  
MAC: D10530399  
301 South College Street  
Charlotte, NC 28202  
Attention of: Joel Brighton  
Telephone No.: (704) 383-5699  
Facsimile No.: (877) 572-7039  
E-mail: [joel.brighton@wellsfargo.com](mailto:joel.brighton@wellsfargo.com)

and

Goldberg Kohn Ltd.  
55 E. Monroe  
Suite 3300

Chicago, IL 60603  
Attention of: Zachary J. Garrett  
Telephone No.: (312) 201-4000  
Facsimile No.: (312) 863-7149  
E-mail: [zachary.garrett@goldbergkohn.com](mailto:zachary.garrett@goldbergkohn.com)

If to any Lender:

To the address set forth on the Register

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any Issuing Lender pursuant to Article II if such Lender or such Issuing Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in its or their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by them, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Administrative Agent's Office. The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrowers and Lenders, as the Administrative Agent's Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(d) Change of Address, Etc. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

(e) Platform.

(i) Each Borrower agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lenders and the other Lenders by posting the Borrower Materials on the Platform.

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower's or the Administrative Agent's transmission of communications through the Internet (including, without limitation, the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Borrower, any Lender, the Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

SECTION 12.2 Amendments, Waivers and Consents. Except as set forth below or as specifically provided for elsewhere in this Agreement or in any other Loan Document, any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrowers; provided, that no amendment, waiver or consent shall:

(a) without the prior written consent of the Required Revolving Credit Lenders, amend, modify or waive (i) Section 6.2 if the effect of such amendment, modification or waiver is to require the Revolving Credit Lenders to make Revolving Credit Loans when such Revolving Credit Lenders would not otherwise be required to do so, (ii) except as otherwise set forth in Section 2.1(c), the definition of Borrowing Base or any of the defined terms (including the definitions of Permitted Overadvance, Eligible Accounts, Eligible Foreign Accounts and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base than what would have been permitted under such definitions in effect as of the Closing Date, but not otherwise, (iii) the amount of the Swingline Commitment, or (iv) the amount of the L/C Sublimit;

(b) increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 10.2) or the amount of Term Loans of any Lender, in any case, without the written consent of such Lender;

(c) waive, extend or postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment (it being understood that a waiver of a mandatory prepayment under Section 4.4(b) shall only require the consent of the Required Lenders) of principal, interest, fees or other amounts due to the Lenders (or any of them) or any scheduled or mandatory reduction of the Revolving Credit Commitment hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided, however, that Required Lenders may waive, extend, postpone, rescind, or otherwise modify (i) the default rate portion of any default rate interest that may accrue pursuant to Section 5.1(b) of the Credit Agreement at any time on or after the Closing Date and (ii) any monthly overadvance charge that may be due and payable pursuant to Section 5.3(c) of the Credit Agreement at any time on or after the Closing Date;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clause (iv) of the proviso set forth in the paragraph below) any fees or other amounts payable hereunder or under any other Loan Document, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Margin that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each Lender directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to waive any obligation of the Borrowers to pay interest at the rate set forth in Section 5.1(b) during the continuance of an Event of Default or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Obligation or to reduce any fee payable hereunder;

(e) change Section 5.6 or Section 10.4 in a manner that would alter the pro rata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;

(f) change Section 4.4(b)(vi) in a manner that would alter the order of application of amounts prepaid pursuant thereto without the written consent of each Lender directly and adversely affected thereby;

(g) except as otherwise permitted by this Section 12.2 change any provision of this Section or reduce the percentages specified in the definitions of "Required Lenders," or "Required Revolving Credit Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly affected thereby;

(h) consent to the assignment or transfer by any Borrower of such Borrower's rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 9.4), in each case, without the written consent of each Lender;

(i) [reserved]; or

(j) release all or substantially all of the Collateral or release any Security Document (other than as authorized in Section 11.9 or as otherwise specifically permitted or contemplated in this Agreement or the applicable Security Document) without the written consent of each Lender;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each affected Issuing Lender in addition to the Lenders required above, affect the rights or duties of such Issuing Lender under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (v) each Letter of Credit Application may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Letter of Credit Application shall be promptly delivered to the Administrative Agent upon such amendment or waiver, (vi) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time, (vii) the Administrative Agent and the Borrowers shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrowers shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision, and (viii) no amendment, waiver or consent shall, unless in writing and signed by each Lender, increase the Revolving Credit Commitments or extend the Revolving Credit Maturity Date until the completion of all flood insurance documentation, diligence and coverage as required by the Flood Disaster Protection Act of 1973, as amended, or as otherwise satisfactory to all Lenders. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Revolving Credit Commitment of such Lender may not be increased or extended without the consent of such Lender.

### SECTION 12.3 Expenses; Indemnity.

(a) Costs and Expenses. The Borrowers, jointly and severally, shall pay (i) all expenses incurred by the Administrative Agent, the Prepetition Agent, the Lenders, the Prepetition Lenders and its respective Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, the Prepetition Agent, the Lenders, the Prepetition Lenders and its respective Affiliates), in connection with the Credit Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other

Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, the Prepetition Agent, any Lender, any Prepetition Lender or any Issuing Lender (including the fees, charges and disbursements of any attorneys, accountants, consultants, and other advisors or professionals engaged by, the Administrative Agent, the Prepetition Agent, any Lender, any Prepetition Lender, any Issuing Lender, or any counsel to any of the foregoing), in connection with the enforcement or protection of its rights (A) in connection with this Agreement, the Prepetition Credit Agreement, the other Loan Documents and the Prepetition Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder or any of the other Secured Obligations or Prepetition Secured Obligations, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, Letters of Credit, other Secured Obligations or Prepetition Secured Obligations, including, without limitation, any and all fees, costs, expenses, and other charges incurred by the Administrative Agent, the Prepetition Agent, any Lender, any Prepetition Lender or any Issuing Lender relating to any field exam, audit, appraisal, or valuation in process as of the Closing Date or conducted from and after the Closing Date, including, without limitation, by any Agent Consultant (in each case, whether or not included in the Variance Budget or Budget), and including, without limitation, any charges relating to the engagement of any Agent Consultant from time to time (in each case, whether or not included in the Variance Budget or Budget). ). Notwithstanding anything set forth herein to the contrary, to the extent any fees, costs and expenses are to be indemnified or reimbursed hereunder, and such fees, costs and expenses are not included in the Variance Budget or the Budget, then any such fees, costs or expenses paid pursuant to this Section 12.3(a) or 8.14 shall not reduce the availability of Revolving Credit Loans under this Agreement and appropriate adjustments shall be made to the Permitted Overadvance in the Variance Budget to ensure that the availability of the Revolving Credit Loans shall not be affected by such indemnification or reimbursement.

(b) Indemnification by the Borrowers. The Borrowers, jointly and severally, shall indemnify the Administrative Agent, Prepetition Agent (and any sub-agent of either of the foregoing), each Lender, each Prepetition Lender and each Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, and shall pay or reimburse any such Indemnatee for, any and all losses, claims (including, without limitation, any Environmental Claims), penalties, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrowers), other than such Indemnatee and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, the Prepetition Credit Agreement, any other Loan Document, any other Prepetition Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (including, without limitation, the Transactions), (ii) any Loan, Letter of Credit, other Secured Obligation, or Prepetition Secured Obligation, or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection



with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any Subsidiary thereof, or any Environmental Claim related in any way to any Borrower or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent, Prepetition Agent, any Lender or any Prepetition Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, any other Secured Obligations, the Prepetition Secured Obligations, this Agreement, the Prepetition Credit Agreement, any other Loan Document, any other Prepetition Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant's fees, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (B) result from a claim brought by any Borrower or any Subsidiary thereof against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower or such Subsidiary has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. This Section 12.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time, or if the Total Credit Exposure has been reduced to zero, then based on such Lender's share of the Total Credit Exposure immediately prior to such reduction) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to any Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Credit Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Credit Lenders' Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Revolving Credit Commitment has been reduced to zero as of such time, determined immediately prior to such reduction); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such Issuing Lender or the

Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 5.7.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrowers shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

#### SECTION 12.4 Setoff; Collection of Payments.

(a) Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, the Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrowers against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Lender, such Issuing Lender or the Swingline Lender or any of their respective Affiliates, irrespective of whether or not such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Borrower may be contingent or unmatured or are owed to a branch or office of such Lender, such Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; *provided that* in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 10.4 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lenders, the Swingline Lender and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Lender, the Swingline Lender and their respective Affiliates under this Section are in addition to other rights

and remedies (including other rights of setoff) that such Lender, such Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each Lender, such Issuing Lender and the Swingline Lender agree to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) Collection of Payments. Each Borrower hereby authorizes Administrative Agent to collect all principal, interest, fees, charges, expenses, attorneys' fees and any other sum chargeable to Borrowers arising under or in connection with this Agreement or any of the other Loan Documents under each credit subject hereto, at any time and from time to time, by charging such Borrower's deposit account number 4151798089 with Administrative Agent or any of its affiliates, or any other deposit account maintained by such Borrower with Administrative Agent or any of its affiliates for the full amount thereof. Should there be insufficient funds in any such deposit account to pay all such sums when due, or Administrative Agent, in its sole discretion, so elects, the full amount of such deficiency may be charged as a Revolving Credit Loan (it being acknowledged and agreed by each Borrower that any charging of amounts due and payable as a Revolving Credit Loan shall be deemed to constitute a demand for payment thereof), and Borrowers hereby agree that Administrative Agent may designate such amounts as Revolving Credit Loans under this Agreement.

#### SECTION 12.5 Governing Law; Jurisdiction, Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of Illinois and, to the extent applicable, the Bankruptcy Code.

(b) Submission to Jurisdiction. The Borrowers irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, any Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of Illinois sitting in Cook County, and of the United States District Court for the Northern District of Illinois, and any appellate court from any thereof, and the Bankruptcy Court, and, if the Bankruptcy Court abstains from hearing or refuses to exercise jurisdiction, each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such Illinois State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Borrower hereby agrees to waive any rights it may have to object to adjudication by a judge of the Bankruptcy Court on the basis of a right to have matters adjudicated in front of an Article III judge. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender, any Issuing Lender

or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrowers or their properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Borrower irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 12.6 Waiver of Jury Trial.

(a) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 12.7 Reversal of Payments. To the extent any Borrower makes a payment or payments to the Administrative Agent for the ratable benefit of the Lenders or the Administrative Agent receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

SECTION 12.8 Injunctive Relief. Each Borrower recognizes that, in the event such Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrowers agree that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

SECTION 12.9 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that none of the Borrowers may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it); provided that, in each case with respect to any Credit Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$2,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of the Term Loan Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, each Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that such Borrower shall be deemed to have given its consent five (5)

Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by such Borrower prior to such fifth (5th) Business Day;

(ii) Proportionate Amounts. 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 Loan or the Commitment assigned;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) [reserved];

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Credit Facility or any unfunded Term Loan Commitments if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment or a Term Loan Commitment, as applicable, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) the Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consents of the Issuing Lenders and the Swingline Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) the Borrowers or any of their Subsidiaries or Affiliates, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) Subordinated Lender, any other holder of any of the Subordinated Notes, or any Affiliate of Subordinated Lender or any such other holder, in the case of this clause (C), without the prior written consent of Administrative Agent.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the

parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of each Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lenders, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Credit Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.10, 5.11 and 12.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section (other than a purported assignment to a natural Person or the Borrowers or any of their Subsidiaries or Affiliates, which shall be null and void.)

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices in Charlotte, North Carolina, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender (but only to the extent of entries in the Register that are applicable to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than (1) a natural Person, (2) the Borrowers or any of the Borrowers' Subsidiaries or Affiliates, or (3) Subordinated Lender, any other holder of any of the Subordinated Notes, or any Affiliate of Subordinated Lender or any such other holder, in the case of this clause (3), without the prior written consent of the Administrative Agent) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Issuing Lender, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.3(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver or modification described in Section 12.2(b), (c), (d) or (e) that directly and adversely affects such Participant. Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.9, 5.10 and 5.11 (subject to the requirements and limitations therein, including the requirements under Section 5.11(g) (it being understood that the documentation required under Section 5.11(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.12 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.10 or 5.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 5.12(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 5.6 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-



1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. 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 without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 12.10 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the Issuing Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) as to the extent required by Applicable Laws or regulations or in any legal, judicial, administrative or other compulsory, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Secured Hedge Agreement or Secured Cash Management Agreement, or any action or proceeding relating to this Agreement, any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrowers and their obligations, this Agreement or payments hereunder, (iii) to an investor or prospective investor in an Approved Fund that also agrees that Information shall be used solely for the purpose of evaluating an investment in such Approved Fund, (iv) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in an Approved Fund in connection with the administration, servicing and reporting on the assets serving as collateral for an Approved Fund, or (v) to a nationally recognized rating agency that requires access to information regarding the Borrowers and their Subsidiaries, the Loans and the Loan Documents in connection with ratings issued with respect to an Approved Fund, (g) [reserved], (h) with the consent of the Borrowers, (i) to Gold Sheets and other similar bank trade publications, such information to consist of deal terms and other information customarily found in such publications, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, any Issuing Lender or any of their respective Affiliates from a third party that is not, to such Person's knowledge, subject to confidentiality obligations to the Borrowers, (k) to governmental regulatory authorities in connection with any

regulatory examination of the Administrative Agent or any Lender or in accordance with the Administrative Agent's or any Lender's regulatory compliance policy if the Administrative Agent or such Lender deems necessary for the mitigation of claims by those authorities against the Administrative Agent or such Lender or any of its subsidiaries or affiliates, (l) to the extent that such information is independently developed by such Person, or (m) for purposes of establishing a "due diligence" defense. For purposes of this Section, "Information" means all information received from any Borrower or any Subsidiary thereof relating to any Borrower or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Lender on a nonconfidential basis prior to disclosure by any Borrower or any Subsidiary thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

For purposes of this Section, "Information" means all information received from any Borrower or any Subsidiary thereof relating to any Borrower or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Lender on a nonconfidential basis prior to disclosure by any Borrower or any Subsidiary thereof, provided that, in the case of information received from a Borrower or any such Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 12.11 Performance of Duties. Each of the Borrower's obligations under this Agreement and each of the other Loan Documents shall be performed by such Borrower at its sole cost and expense.

SECTION 12.12 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Secured Obligations remain unpaid or unsatisfied, any of the Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 12.13 Survival.

(a) All representations and warranties set forth in Article VII and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall

survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XII and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

SECTION 12.14 Titles and Captions. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

SECTION 12.15 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 12.16 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, the Issuing Lender and/or the Swingline Lender, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the Illinois Electronic Commerce Security Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 12.17 Term of Agreement. This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations arising hereunder or under any other Loan Document shall have been Paid In Full. No termination of this Agreement

shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

SECTION 12.18 USA PATRIOT Act. The Administrative Agent and each Lender hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act, each of them is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with the PATRIOT Act.

SECTION 12.19 Independent Effect of Covenants. The Borrowers expressly acknowledge and agree that each covenant contained in Articles VIII or IX hereof shall be given independent effect. Accordingly, the Borrowers shall not engage in any transaction or other act otherwise permitted under any covenant contained in Articles VIII or IX, before or after giving effect to such transaction or act, the Borrowers shall or would be in breach of any other covenant contained in Articles VIII or IX.

SECTION 12.20 Joint and Several Liability.

(a) Each Borrower (other than Hobbico) authorizes Hobbico with full power and authority as attorney-in-fact, to execute and deliver requests for Borrowings, and each other instrument, certificate and report to be delivered by Borrowers to Administrative Agent pursuant to this Agreement. Each Borrower agrees that it shall be bound by any action taken by Hobbico on its behalf pursuant to such appointment.

(b) Each Borrower acknowledges and agrees that it is the intent of the parties that each such Borrower be primarily liable for the obligations as a joint and several obligor (except as specifically set forth in this Section 12.20). It is the intention of the parties that with respect to liability of any Borrower hereunder arising solely by reason of its being jointly and severally liable for Borrowings, L/C Obligations, or other extensions of credit taken by a Borrower, the obligations of such Borrower shall be absolute, unconditional and irrevocable irrespective of:

(i) any lack of validity, legality or enforceability of this Agreement or the Notes as to any Borrower, as the case may be;

(ii) the failure of Administrative Agent or any Lender or any holder of the Note to enforce any right or remedy against any Borrower, as the case may be, or any other Person (including any guarantor) under the provisions of this Agreement, the Notes, or otherwise or to exercise any right or remedy against any guarantor of, or collateral securing, any obligations;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other extension, compromise or renewal of any Obligation;

(iv) any reduction, limitation, impairment or termination of any Obligations with respect to any Borrower, as the case may be, for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and each Borrower hereby waives any right to or claim of) any defense (other than the defense of

Payment In Full of the Obligations) or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality, nongenuineness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Obligations with respect to any Borrower, as the case may be;

(v) any addition, exchange, release, surrender or nonperfection of any collateral, or any amendment to or waiver or release or addition of, or consent to departure from, any guaranty, held by Administrative Agent or any holder of the Notes securing any of the Obligations; or

(vi) any other circumstance which might otherwise constitute a defense (other than the defense of Payment In Full of the Obligations) available to, or a legal or equitable discharge of, any Borrower, as the case may be, any surety or any guarantor.

(c) Each Borrower agrees that its joint and several liability hereunder shall continue to be effective or be reinstated, as the case may be, if at any time any payment (in whole or in part) of any of the Obligations is rescinded or must be restored by Administrative Agent, Lenders or any holder of the Notes, upon the insolvency, bankruptcy or reorganization of any Borrower, as the case may be, as though such payment had not been made.

(d) Each Borrower hereby expressly waives: (i) notice of Administrative Agent's and Lenders' acceptance of this Agreement; (ii) notice of the existence or creation or non-payment of all or any of the Obligations other than notices expressly provided for in this Agreement; (iii) presentment, demand, notice of dishonor, protest, and all other notices whatsoever other than notices expressly provided for in this Agreement; and (iv) all diligence in collection or protection of or realization upon the Obligations or any part thereof, any obligation hereunder, or any security for or guaranty of any of the foregoing.

(e) No delay on Administrative Agent's or any Lenders' part in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Administrative Agent or Lenders of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action of Administrative Agent or Lenders permitted hereunder shall in any way affect or impair Administrative Agent's or Lenders' rights or any Obligations under this Agreement.

(f) Each Borrower hereby represents and warrants to Administrative Agent and Lenders that it now has and will continue to have independent means of obtaining information concerning Borrowers' affairs, financial condition and business. None of Administrative Agent and Lenders shall have any duty or responsibility to provide any Borrower with any credit or other information concerning any Borrower's affairs, financial condition or business which may come into Administrative Agent's or Lenders' possession.

(g) Each Borrower represents and warrants (i) that the business operations of Borrowers are interrelated and complement one another, and such entities have a common business purpose, and (ii) that, to permit their uninterrupted and continuous operations, such entities now require and will from time to time hereafter require funds and credit accommodations for general business purposes and that (iii) the proceeds of Borrowings and

other credit facilities extended hereunder will directly or indirectly benefit Borrowers hereunder, severally and jointly, regardless of which Borrower receives part or all of the proceeds of such Borrowings.

(h) Notwithstanding anything to the contrary contained herein, it is the intention of Borrowers, Administrative Agent and Lenders that the amount of Borrowers' obligations hereunder shall be in, but not in excess of, the maximum amount thereof not subject to avoidance or recovery by operation of any applicable Debtor Relief Laws. To that end, but only in the event and to the extent that Borrowers' respective obligations hereunder or any payment made pursuant thereto would, but for the operation of the foregoing proviso, be subject to avoidance or recovery under Debtor Relief Laws, the amount of Borrowers' respective obligations hereunder shall be limited to the largest amount which, after giving effect thereto, would not, under applicable Debtor Relief Laws, render Borrowers' respective obligations hereunder unenforceable or avoidable or subject to recovery under applicable Debtor Relief Laws. To the extent any payment actually made hereunder exceeds the limitation contained in this Section 12.20(h), then the amount of such excess shall, from and after the time of payment by Borrowers (or any of them), be reimbursed by Administrative Agent and Lenders upon demand by such Borrowers. The foregoing proviso is intended solely to preserve the rights of Administrative Agent and Lenders hereunder against Borrowers to the maximum extent permitted by applicable Debtor Relief Laws and neither any Borrower nor any other Person shall have any right or claim under this Section 12.20(h) that would not otherwise be available under applicable Debtor Relief Laws.

SECTION 12.21 [Reserved].

SECTION 12.22 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security Documents which imposes additional burdens on the Borrowers or any of their Subsidiaries or further restricts the rights of the Borrowers or any of their Subsidiaries or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

**[Signature pages to follow]**

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

BORROWERS:

HOBBICO, INC.  
TOWER HOBBIES, INC.  
GREAT PLANES MODEL MANUFACTURING,  
INC.  
UNITED MODEL, INC.  
REVELL INC.  
ESTES-COX CORP.  
AXIAL R/C INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AGENT AND LENDER:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Administrative Agent, Swingline  
Lender, Issuing Lender and Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



LENDER:

PNC BANK, NATIONAL ASSOCIATION, as a  
Lender

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

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

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

LENDER:

BMO HARRIS BANK, NATIONAL ASSOCIATION,  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LENDER:

US BANK, NATIONAL ASSOCIATION, as a Lender

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

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

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

**SCHEDULE 1.1(b)**  
Lenders; Commitments; Percentage Shares

| <b>LENDER</b>                             | <b>Revolving<br/>Credit<br/>Commitment</b> | <b>Revolving<br/>Credit<br/>Commitment<br/>Percentage</b> | <b>Outstanding<br/>Initial Term<br/>Loan<br/>Commitment<sup>1</sup></b> | <b>Term Loan<br/>Percentage</b> |
|---|--|---|---|---------------------------------|
| Wells Fargo Bank,<br>National Association | \$21,724,137.64                            | 48.27586%   | \$12,986,206.72   | 48.27586%                       |
| PNC Bank, National<br>Association         | \$9,310,500.00                             | 20.68965%   | \$5,565,610.00  | 20.68965%                       |
| BMO Harris Bank,<br>National Association  | \$9,310,500.00                             | 20.68965%   | \$5,565,610.00  | 20.68965%                       |
| US Bank, National<br>Association          | \$4,654,862.36                             | 10.34482%   | \$2,782,573.28  | 10.34482%                       |
| <b>Total</b>                              | <b>\$45,000,000.00</b>                     | <b>100.00%</b>  | <b>\$26,900,000.00</b>  | <b>100.00%</b>                  |

<sup>1</sup> As increased by all interest, fees, costs and other charges accrued and accruing with respect to the Prepetition Term Obligations (other than adequate protection in the form of cash payments paid to the Prepetition Lenders in respect of the Prepetition Term Loans).

**SCHEDULE 8.21**  
Sale Covenants

Borrowers hereby agree that Borrowers will timely deliver, or cause the timely delivery of, the following items on or before the dates specified below, in each case, in form and substance satisfactory to Agents in their discretion:

1. On or before January 15, 2018 (or such later date as Agents may agree to in writing in their discretion), Borrowers will deliver one or more indications of interest from prospective purchasers with respect to the Sale, in form and substance satisfactory to Agents, including, without limitation, with respect to the identity of the prospective purchaser, purchase price, any conditions to closing, the closing date, and other terms and conditions (each, an "Indication of Interest").

2. On or before February 16, 2018 (or such later date as Agents may agree to in writing in their discretion), Borrowers will deliver one or more definitive stalking horse purchase agreements with respect to the Sale, in form and substance satisfactory to Agents, including, without limitation, with respect to the identity of the prospective purchaser, purchase price, any conditions to closing, the closing date, and other terms and conditions (each, a "Stalking Horse Purchase Agreement").

3. On or before February 16, 2018 (or such later date as Agents may agree to in writing in their discretion), Borrowers will file a motion, in form and substance acceptable to each Agent, to approve procedures for conducting a sale process and auction to sell all, or substantially all, of the assets of Borrowers and, if applicable, to approve payment of certain fees to a stalking horse bidder in connection therewith ("Sale Procedures Motion").

4. On or before March 9, 2018 (or such later date as Agents may agree to in writing in their discretion), Borrowers will obtain entry of an order of the Bankruptcy Court, in form and substance acceptable to Agents, granting the Sale Procedures Motion (the "Sale Procedures Order").

5. On or before March 26, 2018 (or such later date as Agents may agree to in writing in their discretion), Borrowers will conduct one or more auctions for all, or substantially all, of the assets of the Borrowers pursuant to, and in accordance with, the Sale Procedures Order ("Auction").

6. On or before March 29, 2018 (or such later date as Agents may agree to in writing in their discretion), Borrowers will obtain entry of an order of the Court, in form and substance satisfactory to Agents ("Sale Order"), authorizing and approving one or more sales of all, or substantially all, of the assets of the Borrowers pursuant to one or more definitive purchase agreements in form and substance acceptable to Agents, including, without limitation, with respect to the identity of the prospective purchaser, purchase price, any conditions to closing, the closing date, and other terms and conditions (each, a "Purchase Agreement").

7. On or before April 5, 2018 (or such later date as Required Lenders may agree to in writing in their discretion), Borrowers shall have consummated one or more sales of all, or

substantially all, of the assets of Borrowers, pursuant to, and in accordance with, the terms of the Sale Order and the Purchase Agreement(s), and remitted all of the proceeds thereof (net only of such fees, expenses, charges, or other amounts that may be expressly agreed to, in writing, by Agents and the requisite Lenders) to Administrative Agent for application in accordance with the terms of the Financing Orders, as applicable (the consummation of such sales, the "Sale Closing").

8. Notwithstanding anything to the contrary in this Schedule 8.21, any written agreement of Agents, if any, to extend any of the covenant deadlines set forth in items 1 through 6 above by more than 10 days shall in each case require the written consent of Required Lenders.

8. In addition to the foregoing terms of this Schedule 8.21, until the consummation of a Sale Closing with respect to the sale of all, or substantially all, of the Borrowers' assets, the Borrowers will: (a) continue to engage an Investment Banker for purposes of preparing, marketing, and consummating a Sale in accordance with the terms and conditions of the Loan Documents (including, without limitation, Section 8.20 of this Agreement); (b) promptly (and in any event within two (2) Business Days) provide Agents with notice of (i) any written or otherwise binding amendment, supplement, or other modification of any kind to any confidentiality agreement, any Indication of Interest, any Stalking Horse Purchase Agreement, or any Purchase Agreement (or to any of the accompanying term sheets) and (ii) any notice of any kind, whether oral or written, from any potential purchaser that such purchaser does not intend to proceed with any or all of the transactions set forth in any such Indication of Interest, Stalking Horse Purchase Agreement, Purchase Agreement or term sheets, or to further negotiate the same; (c) promptly (and in any event within two (2) Business Days) provide Agents with copies of any and all other term sheets, indications of interest, proposal letters, letters of intent, definitive offers, and any other written indications of interest received by any of the Borrowers, Investment Banker, or any of their agents at any time relating to any Sale, or any other strategic transaction (including, without limitation, any refinancing of the Secured Obligations), and all such information and reports as any Agent may reasonably request from time to time relating to the status and progress of the consummation of any Sale or any other strategic transaction; (d) continue to actively negotiate in good faith with all viable and active potential purchasers that have provided a term sheet, Indication of Interest, Stalking Horse Purchase Agreement or Purchase Agreement to Borrowers, the Investment Banker, or any of their agents, and will promptly notify Agents if any such negotiations cease or are suspended by Borrowers or any such prospective purchaser; (e) make Borrowers' Chief Restructuring Officer, other key executives, management, Investment Banker, and Consultant reasonably available for presentations to, and interviews with, each prospective purchaser and will coordinate all such efforts with Investment Banker; and (f) maintain a data room with respect to the Sale, which will include all relevant documents and information within Borrowers' possession or control that Agents may reasonably request from time to time, and to which the Agents, Lenders, Prepetition Lenders, and any consultant, financial advisor, or counsel engaged by any Agent, Lender, Prepetition Lender or their counsel, will have unlimited access rights and review rights at all times.

9. Notwithstanding anything in this Agreement to the contrary, it will constitute an automatic Event of Default (without any notice or grace or cure period) if, at any time and for any reason: (a) any Stalking Horse Purchase Agreement or Purchase Agreement, as applicable, is

amended, supplemented, or otherwise modified in any manner not satisfactory to Agents, in their discretion, and any such amendment, supplement, or other modification is not revised in a manner satisfactory to each Agent, in its discretion, within three (3) days after the Borrowers' receipt of written notice (which may be by electronic mail) from any Agent; (b) any Borrower or any prospective purchaser terminates any Indication of Interest, Stalking Horse Purchase Agreement, or Purchase Agreement or otherwise suspends or terminates any such Borrower's or prospective purchaser's negotiations or participation in respect of the Sale process and, at such time, no other prospective purchaser acceptable to Agents, in their discretion, is actively, and in good faith, negotiating a Sale under an alternative Indication of Interest, Stalking Horse Purchase Agreement, or Purchase Agreement, as applicable, that was timely delivered under, and in accordance with, the terms of Section 8.21 and this Schedule 8.21; or (c) any Indication of Interest is amended, supplemented, or otherwise modified in any manner not satisfactory to Agents, in their discretion, and such amendment, supplement, or other modification is not revised in a manner satisfactory to each Agent, in its discretion, within three (3) days after the Borrowers' receipt of written notice (which may be by electronic mail) from any Agent and, at such time, no other prospective purchaser acceptable to each Agent in its discretion is actively, and in good faith, negotiating a Sale under an alternative Indication of Interest that was timely delivered under, and in accordance with, the terms of Section 8.21 and this Schedule 8.21.