

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

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In re:	)	Chapter 11
	)	
SP NEWSPRINT HOLDINGS LLC, <u>et al.</u> , <sup>1</sup>	)	Case No. 11-13649 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	<b>Hearing Date (Proposed): Dec. 16, 2011 at 3:30 p.m. (EST)</b>

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**NOTICE OF MOTIONS AND HEARING**

PLEASE TAKE NOTICE that, on December 15, 2011, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105,341,362,364, and 507; and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Liens and Super-Priority Claims; (III) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 363, and 364; and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each of the Debtors’ tax identification numbers, are: SP Newsprint Holdings, LLC (6180); SP Newsprint Co. LLC (7779); SP Recycling Corporation (2936); and SEP Technologies, L.L.C. (2955).

PLEASE TAKE FURTHER NOTICE that, on December 15, 2011, the Debtors also filed the *Debtors' Motion for Entry of Order Shortening Notice and Requested Expedited Hearing With Respect to Interim Relief Requested in Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors (A) to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105,341,362,364, and 507; and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Liens and Super-Priority Claims; (III) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 363, and 364; and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001* (the "Motion to Shorten")<sup>2</sup> with the Bankruptcy Court, pursuant to which the Debtors have requested approval of a shortened notice period relating to the Interim DIP Relief requested in the Motion.

PLEASE TAKE FURTHER NOTICE that if the Bankruptcy Court grants the relief requested in the Motion to Shorten, a hearing to consider Interim DIP Relief requested in the Motion will be held before The Honorable Christopher S. Sontchi at the Bankruptcy Court, 824 N. Market Street, 5<sup>th</sup> Floor, Courtroom 6, Wilmington, Delaware 19801 on **December 16, 2011 at 3:30 p.m. (EST)**.

PLEASE TAKE FURTHER NOTICE that if the Bankruptcy Court denies the relief requested in the Motion to Shorten, parties-in-interest will receive separate notice of the court-approved hearing date with respect to the Interim DIP Relief requested in the Motion.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion to Shorten.

Dated: December 15, 2011  
Wilmington, Delaware

Respectfully submitted,

*/s/ Lee E. Kaufman*

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the Debtors-in-Possession*

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In re:	)	) Chapter 11
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SP NEWSPRINT HOLDINGS LLC, <u>et al.</u> , <sup>1</sup>	)	) Case No. 11-13649 (CSS)
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Debtors.	)	) Jointly Administered
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	)	) <b>Hearing Date (Proposed): Dec. 16, 2011 at 3:30 p.m. (EST)</b>

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**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364, AND 507 AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS; (III) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364; AND (IV) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned attorneys, hereby file this motion (the “Motion”) for the entry of interim and final orders (the “Interim Order” and the “Final Order”, respectively) (i) authorizing the Debtors (a) to obtain post-petition financing (the “DIP Financing”), pursuant to Bankruptcy Code §§ 105, 361, 362, 364, and 507, consisting of a senior secured super-priority debtor-in-possession delayed-draw term loan facility in the amount of up to \$12 million on an interim basis and up to \$25 million on a final basis, substantially on the terms set forth in the draft debtor-in-possession credit agreement attached hereto as Exhibit A (as amended, supplemented, or otherwise modified and in effect from time to time, the “DIP Credit Agreement”, together with any and all other related documents and agreements entered into in connection with or related to the DIP Financing, including the Interim Order and the Final Order, the “DIP Loan Documents”)

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each of the Debtors’ tax identification numbers, are: SP Newsprint Holdings, LLC (6180); SP Newsprint Co. LLC (7779); SP Recycling Corporation (2936); and SEP Technologies, L.L.C. (2955).

and in the Interim Order, substantially in the proposed form attached hereto as Exhibit B;<sup>2</sup> (b) to utilize cash collateral, pursuant to Bankruptcy Code § 363; (ii) granting liens and super-priority claims; (iii) granting adequate protection to pre-petition secured parties, pursuant to Bankruptcy Code §§ 361, 362, 363, and 364; and (iv) scheduling a final hearing pursuant to Bankruptcy Rule 4001. In support of the relief requested in this Motion, the Debtors rely upon the declaration of Alan D. Holtz submitted in support of this Motion (the “Holtz Declaration”), a copy of which is attached hereto as Exhibit C, and in further support of the relief requested herein, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are Bankruptcy Code §§ 105, 361, 362, 363, 364, and 507, Bankruptcy Rules 2002, 4001, 6004, and 9014, and Local Rule 4001-2.

### **OVERVIEW**

2. As discussed below, the Debtors commenced these Chapter 11 cases (these “Cases”) to obtain necessary financing to support their operations and general business needs and to conduct a going-concern sale process in Chapter 11 to maximize the value of their enterprise.

3. Although the Debtors and certain of their pre-petition senior secured lenders (the “Pre-Petition Lenders”) engaged in discussions regarding potential post-petition

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Loan Documents. The Debtors anticipate filing revised proposed forms of the Interim Order and the DIP Credit Agreement prior to the Interim Hearing.

financing for these Cases, the Debtors entered bankruptcy without any agreed source of funding. Shortly after the Petition Date, the Debtors entered into a consensual cash collateral arrangement with the Pre-Petition Lenders, which was approved on an interim basis by an order of this Court entered on November 17, 2011 (the “Interim Cash Collateral Order”) [ECF No. 54], to allow the Debtors to continue arms’-length negotiations on a DIP facility and other matters.

4. These negotiations have culminated in an agreement between the Debtors and certain of the Pre-Petition Lenders, led by General Electric Capital Corporation, as agent (“GECC”), to enter into the DIP Credit Agreement for a new senior secured priming loan, in the amount of up to \$25 million, subject to the approval of this Court. The DIP Financing would provide the Debtors with working capital to operate in Chapter 11 and preserve the value of their business, while they engage in an orderly going-concern sale process.

5. For the reasons discussed below, the Debtors believe that the DIP Financing addresses their near-term liquidity needs and constitutes the best financing option available to them under the circumstances.

### **INTRODUCTION**

6. On November 15, 2011, the Debtors filed with this Court separate, voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On November 17, 2011, this Court entered an order [ECF No. 57] directing the joint administration of these Cases.

7. The Debtors continue to manage their properties and operate their business as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed in these Cases.

8. On November 29, 2011, the United States Trustee appointed the Committee.

9. SP Newsprint Co., LLC (“SP”), one of the Debtors’ two main operating companies, is one of the largest producers of newsprint in North America, operating two newsprint mills located in Dublin, Georgia, and Newberg, Oregon. SP Recycling Corporation, the Debtors’ other operating company, was established in 1980 as a means for SP to secure a ready supply of recycled fiber, a key raw material for newsprint, and it currently has 23 recycling centers in nine states.

10. Like other companies in the newsprint and paper-related industries, a variety of external factors have led to a decline in the Debtors’ revenue over the last several years, while at the same time the cost of necessary raw materials has increased. In response, the Debtors undertook cost-cutting and other measures, but nonetheless, they fell out of compliance with certain covenants under the Pre-Petition Credit Agreement (as defined below) with the Pre-Petition Lenders and have otherwise been in default thereunder since June 2011.

11. For several months, the Debtors engaged in restructuring discussions among, and entered into forbearance agreements with, the Pre-Petition Lenders.

## **FACTUAL BACKGROUND**

### **The Debtors’ Pre-Petition Capital Structure**

12. On or about March 31, 2008, SP Newsprint Merger LLC (a predecessor of the Debtors), as borrower, and each of the Debtors, as guarantors, entered into a \$275 million senior secured credit facility pursuant to that certain Credit Agreement (as amended from time to time and including all related documents, schedules, and agreements, the “Pre-Petition Credit Agreement”, and, together with all other loan and security in connection therewith, the “Pre-Petition Credit Documents”) with GECC, as administrative agent and collateral agent, and the Pre-Petition Lenders, including GECC. The Pre-Petition Credit Agreement provides for a

revolving line of credit of \$50 million, subject to specified reserves and a defined borrowing base, and a \$225 million term loan.

13. As security for their obligations under the Pre-Petition Credit Agreement, the Debtors granted security interests in, and liens upon, substantially all of their assets, with relative priority between GECC, as sole lender under the revolving facility, and the Pre-Petition Lenders, as lenders under the term loan facility, determined by intercreditor provisions of the Pre-Petition Credit Agreement. Specifically, the revolving lender has senior priority on current assets, including cash, accounts receivable, and inventory, and junior priority on fixed assets, including the Debtors' two mills and equipment; similarly, the lenders under the term loan facility have senior priority on fixed assets and junior priority on current assets.

14. As of the Petition Date, approximately \$41 million was outstanding under the revolving facility, and approximately \$213 million, including capitalized unpaid interest, was outstanding under the term loan facility.

15. The revolving facility and the term loan facility both were scheduled to mature on March 31, 2012.

#### The Interim Cash Collateral Order

16. On the Petition Date, the Debtors filed the *Motion for Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection to Lenders, and (III) Granting Related Relief* [ECF No. 17], pursuant to which they sought authorization to use cash collateral to operate their business post-petition. The Debtors and the Pre-Petition Lenders eventually reached a consensual cash collateral arrangement, pursuant to which the Debtors were authorized to use cash collateral, subject to the terms of the Interim Cash Collateral Order.

17. The Debtors' use of cash collateral is conditioned upon their compliance with an approved budget (the "Cash Collateral Budget") attached to the Interim Cash Collateral



Order as Exhibit A (as amended on December 1 and 9, 2011 [ECF Nos. 120 and 174, respectively]). The Cash Collateral Budget reflected, on a line-item basis, the Debtors' weekly projected cash receipts and disbursements and permitted the Debtors to satisfy (a) administrative claims arising and incurred during this period, (b) fees owed to certain of the Debtors' professionals and other parties, and (c) court and United States Trustee fees, in each case whether due then or later. See Interim Cash Collateral Order, ¶ 3(i).

18. In exchange for the Pre-Petition Lenders' consent to the use of cash collateral, the Interim Cash Collateral Order provides adequate protection in the form of replacement liens and super-priority claims, among other things. (Interim Cash Collateral Order ¶ 4.)

19. The Interim Cash Collateral Order is set to expire by its terms on December 16, 2011, and the Debtors will require a new source of funding shortly.

#### The DIP Financing

20. For the reasons set forth below, the Debtors have decided to seek this Court's authority to enter into the DIP Financing. Among other things, the Debtors believe that the DIP Financing would reasonably address their near-term funding requirements and constitutes the best financing option available to them given the circumstances of these Cases and the pending expiration of the Interim Cash Collateral Order.

21. Specifically, the DIP Financing would provide funding to enable the Debtors to continue operating while they carry out the contemplated going-concern sale process under Bankruptcy Code § 363 (the "363 Sale"). Unless explicitly amended by the Interim Order and qualified therein as being "subject to entry of the Final Order", all protections granted to any party under the Interim Cash Collateral Order would remain unaffected by the Interim Order.

**SUMMARY OF PRINCIPAL TERMS OF  
DIP FINANCING AND REQUIRED DISCLOSURES**

22. Bankruptcy Rule 4001 and Local Rule 4001-2(a)(ii) require that motions requesting authority to incur post-petition financing, such as this Motion, contain a concise statement of the relief requested and a summary of the material terms, setting forth where such material terms can be found in the relevant documents, and this required summary is set forth below:<sup>3</sup>

- **The Parties, Other General Terms, and Description of the DIP Financing.** Certain of the Pre-Petition Lenders (the “DIP Lenders”), with GECC acting as agent (in such capacity, the “DIP Agent”), would provide the DIP Financing of up to \$25 million to the Debtors, as borrowers and guarantors under the DIP Financing (the “DIP Obligations”). (DIP Credit Agreement, p. 13.) Upon entry of the Interim Order, SP would be entitled to borrow up to \$12 million under the DIP Lenders’ collective Delayed Draw Commitments during the Delayed Draw Commitment Period. (DIP Credit Agreement, ¶ 2.1(b)-(c); Interim Order, ¶ 2(c).)
- **Priority/Security for DIP Financing.** Pursuant to Bankruptcy Code § 364(c)(2), (c)(3), and (d), and subordinate to the Carve-Out and any valid, enforceable, perfected, and non-avoidable security interests in existence as of the Petition Date that are senior to the Pre-Petition First Priority Liens, the DIP Obligations would be secured by fully-perfected, first-priority security interests and liens (the “DIP Liens”) in substantially all of the property of the Debtors, now existing or hereinafter acquired (the “DIP Collateral”), subject to certain limitations. Pursuant to Bankruptcy Code § 364(d) and subject to the Carve-Out, the DIP Liens would have priority over (i) any and all liens and security interests securing the Pre-Petition Credit Obligations and (ii) any and all other pre-petition and post-petition liens and security interests of any creditor other than certain permitted encumbrances. (Interim Order, ¶ 2(i).) Subject only to the Carve-Out or any claims thereunder (subject to the Carve-Out Cap and other limitations set forth in the Interim Order), the DIP Obligations would also have super-priority administrative claim status pursuant to Bankruptcy Code § 364(c)(1), with priority over any and all other costs and expenses of administration of any kind (the “DIP Claims”). Subject to the entry of the Final Order, the DIP Claims and the adequate protection claims described below would be payable from, and have recourse to, proceeds of Avoidance Actions. (Interim Order, ¶ 2(l).)
- **Adequate Protection.** As adequate protection for any diminution in value of the Collateral from the Petition Date, the Debtors would (i) grant to the Pre-Petition Agent under the Pre-Petition Credit Agreement (for the benefit of itself and the Pre-Petition

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<sup>3</sup> The terms of the DIP Loan Documents shall control in the event of any inconsistency between this summary and the DIP Loan Documents.

Lenders): (a) replacement liens on all of the DIP Collateral, subject and subordinate to the DIP Liens, the Permitted Prior Liens, the Pre-Petition First Priority Liens, and the Carve-Out (subject to the Carve-Out Cap and other limitations set forth in the Interim Order or the Final Order, as applicable) and (b) a super-priority administrative claim junior to the Carve-Out and any claims thereto (subject to the Carve-Out Cap and other limitations set forth in the Interim Order or the Final Order, as applicable) and the DIP Superpriority Claims to the extent provided in the Interim Order or the Final Order (as applicable) and in the DIP Loan Documents; (ii) subject to paragraph 21(a) of the Interim Order, timely pay the reasonable, documented fees and expenses of the professionals retained by the Pre-Petition Agent and the Pre-Petition Lenders (including, but not limited to, legal counsel and financial advisors) upon receipt of an appropriate invoice, provided, however, that any such payment of professional fees would reduce the amount of Pre-Petition Obligations to the extent that the Pre-Petition Agent and other Pre-Petition Secured Parties are not entitled to such payment or reimbursement under Bankruptcy Code § 506(b); and (iii) current cash payments of interest due under the Pre-Petition Credit Agreement, provided further, however, that any such payment of interest would be reapplied to reduce the principal due thereunder in the event the Pre-Petition Agent and other Pre-Petition Secured Parties are not entitled to such payment under Bankruptcy Code § 506(b). (Interim Order, ¶ 4.)

- **Carve-Out.** Subject to the limitations set forth in the DIP Loan Documents, the DIP Liens and the DIP Claims would be subject in each case only to the payment of accrued and unpaid post-petition obligations of the Debtors that were incurred in accordance with the Approved Budget and the Carve-Out, which would be comprised of the following: (i) the Debtor Professional Fees incurred up to and including the earliest of (a) the 363 Sale Termination Date,<sup>4</sup> (b) delivery of a Carve-Out Trigger Notice,<sup>5</sup> or (c) the closing of

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<sup>4</sup> The Interim Order defines “363 Sale Termination Date” as:

[T]he date on which the DIP Agent or, if the DIP Obligations have been repaid in full in cash and all financing commitments under the DIP Loan Documents have terminated, the Pre-Petition Agent, delivers to the Debtors’ lead counsel, the U.S. Trustee, and lead counsel to any Committee appointed in these Cases, a written notice notifying such parties that, (i) except to the extent the DIP Secured Parties or the Pre-Petition Secured Parties have caused the Debtors to do so in violation of this Interim Order, the Final Order or the DIP Loan Documents, the Debtors have ceased to diligently pursue the 363 Sale (as defined below) in accordance with the terms and conditions set forth herein and in the DIP Loan Documents, as determined in the discretion of the DIP Agent (with the consent of the DIP Required Lenders) or the Pre-Petition Agent (with the consent of the Pre-Petition Required Lenders), as applicable; provided, however, that the Debtors reserve their rights to challenge whether they diligently pursued the 363 Sale, or (ii) the DIP Agent, or if the DIP Obligations have been repaid in full in cash and all financing commitments under the DIP Loan Documents have terminated, the Pre-Petition Agent, requests that the Debtors pursue other options for selling the Debtors’ assets, including, without limitation, through (x) multiple sales of the Debtors’ various mills, properties, or business, other than that contemplated by the 363 Sale or (y) a sale or sales to a different purchaser or purchasers other than the DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders.

(Interim Order, ¶ 8(b).)

the 363 Sale, up to certain limitations set forth in paragraph 8(a) of the Interim Order; (ii) the Committee Professional Fees incurred up to and including the earliest of (a) the 363 Sale Termination Date, (b) delivery of a Carve-Out Trigger Notice, or (c) the closing of the 363 Sale, up to certain limitations set forth in paragraph 8(a) of the Interim Order; (iii) all allowed and unpaid Debtor Professional Fees and Committee Professional Fees that are incurred from and after the 363 Sale Termination Date through one business day following the date of delivery of a Carve-Out Trigger Notice and approved by the Court under Bankruptcy Code § 330; (iv) all allowed and unpaid Debtor Professional Fees and Committee Professional Fees that are incurred from and after the delivery of a Carve-Out Trigger Notice and ultimately allowed by the Bankruptcy Court pursuant to Bankruptcy Code § 330 in an aggregate amount not in excess of \$850,000 for the Debtor Professionals and \$300,000 for the Committee Professionals, unless other amounts are agreed to by the DIP Agent and the DIP Required Lenders, on the one hand, and the Debtor Professionals and the Committee Professionals, each on the other hand; (v) all unpaid administrative expenses allowed under Bankruptcy Code § 503(b) (excluding amounts paid pursuant to clauses (i) – (iv) above and, for the avoidance of doubt, excluding all claims under Bankruptcy Code § 503(b)(9)) that (A) are not assumed by the purchaser in the 363 Sale, (B) were incurred prior to the earliest of one business day following (I) the 363 Sale Termination Date, (II) delivery of a Carve-Out Trigger Notice, or (III) the closing of the 363 Sale, as applicable, and (C) (I) are incurred in the Approved Budget through the earliest date specified in clause (B) or (II) were incurred in the ordinary course of business, included in the most recently delivered Weekly Cash Flow Projection, and do not exceed an amount to be agreed upon in the aggregate; (vi) all fees payable pursuant to 28 U.S.C. § 1930(a) and (b); and (vii) all fees due the Clerk of the Court or the clerk of any court to which an appeal may be taken. (Interim Order, ¶ 8(a).)

- **Maturity Date/Term.** The DIP Financing would expire on the earliest to occur of (a) 180 days after the closing date of the DIP Financing, (b) the effective date of any plan of reorganization for the Debtors, (c) the occurrence of any Termination Declaration Date, (d) the date on which the 363 Sale is consummated, and (e) the date on which the DIP Obligations (other than contingent Obligations for which no claim as to a specific amount has been validly made) are indefeasibly repaid (or in the case of contingent Obligations, indefeasibly cash collateralized in accordance with the terms of the DIP Credit Agreement) and all Commitments under the DIP Loan Documents are irrevocably terminated. (See DIP Credit Agreement, pp. 8, 28-29.)

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<sup>5</sup> The Interim Order defines “Carve-Out Trigger Notice” as:

[A] written notice delivered by the DIP Agent to the Debtors’ lead counsel, the U.S. Trustee, and lead counsel to any Committee appointed in these Cases, which notice may be delivered at any time following the occurrence and during the continuation of any Event of Default under the DIP Loan Documents or this Interim Order, expressly stating that the Termination Declaration Date has occurred and that the Carve-Out is invoked as of the next business day.

(Interim Order, ¶ 8(c).)

- **Interest Rates and Fees.** All Loans and the outstanding amount of all other Obligations would bear interest, in the case of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, with certain exceptions, as follows: (i) in the case of Base Rate Loans, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin, each as in effect from time to time, (ii) in the case of Eurodollar Rate Loans, at a rate per annum equal to the sum of the Eurodollar Rate and the Applicable Margin, each as in effect for the applicable Interest Period, and (iii) in the case of other Obligations, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin for Loans that are Base Rate Loans, each as in effect from time to time. (DIP Credit Agreement, ¶ 2.9(a).) Upon the closing of the DIP Financing, the Debtors would pay to the DIP Agent for the benefit of the DIP Lenders a closing fee equal to 3% of each of the DIP Lender's Commitment. The Debtors would also pay, upon closing of the DIP Financing, \$100,000 to the DIP Agent (for its own account) as an arrangement fee, \$400,000 to the DIP Agent (for its own account) as a Structuring Fee, and an Unused Commitment Fee equal to 0.5% per annum. (DIP Credit Agreement, ¶ 2.11.)
- **Budget and Reporting.** Attached to the Interim Order as Exhibit A is an Initial Approved Budget, which reflects, on a line-item basis for such four-week period, the Debtors' projected cash receipts and disbursements (including ordinary course operating expenses, bankruptcy-related expenses in the Cases, capital expenditures and fees and expenses of the DIP Secured Parties and the Pre-Petition Secured Parties (including counsel, financial advisors and other professionals therefor) and any other fees and expenses relating to the DIP Financing), unused availability under the DIP Financing, and unrestricted cash on hand. The Debtors would be authorized to use the borrowings under the DIP Facility only for the purposes specifically set forth in the DIP Loan Documents and the Interim Order and in accordance with the Approved Budget. (Interim Order, ¶ 2(f).) Without the prior written consent of the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, and the Pre-Petition Required Lenders, which may be withheld in their sole discretion, the Approved Budget would not include any payments to the Brant Parties; provided, however, that, notwithstanding anything to the contrary in the Interim Order, the Approved Budget would include a monthly management fee equal to the lesser of (i) 2% of the Borrower's consolidated gross sales for the applicable month and (ii) the sum of (x) \$750,000 (prorated for a partial month) plus (y) if applicable, the cumulative unused portion(s) of any prior Monthly Cap(s) subsequent to the Petition Date payable to Brant Industries pursuant to the Brant Management Agreement in cash solely for the period commencing on the Petition Date and ending on the earlier of (i) the closing of the 363 Credit Bid Agreement or any Alternate APA to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, and the Pre-Petition Required Lenders consent in writing or (ii) the Brant Management Agreement Rejection Date or such later date on which Brant Industries, the Committee, the Debtors, the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, and the Pre-Petition Required Lenders consent in writing in their respective sole discretion; provided, however, that if (i) the Brant Parties have performed and complied with all of their post-petition obligations in all material respects under the Brant Management Agreement, the

Interim Order, and the Final Order, and (ii) the transactions contemplated by the Credit Bid APA, or any Alternate APA in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders, and the Pre-Petition Required Lenders are consummated, then the Accrued Fee would be paid to Brant Industries at the closing of such transactions. (Interim Order, ¶ 2(f).)

- **Application of Proceeds.** Subject to the Carve-Out, the proceeds of DIP Collateral, the proceeds of Pre-Petition Collateral, any amounts held on account of the DIP Collateral or Pre-Petition Collateral, and all payments and collections received by the Debtors would be applied as follows: prior to the Termination Declaration Date, to pay (i) interest, fees, costs, and expenses due and payable under the DIP Loan Documents and costs and expenses due and payable under the Pre-Petition Credit Documents, as applicable, in each case, in accordance with the DIP Loan Documents, the Pre-Petition Credit Documents, and the Interim Order or the Final Order, or (ii) to the extent permitted by the DIP Loan Documents, the Pre-Petition Credit Documents, the Interim Order, or the Final Order, to pay expenses set forth in the Approved Budget (Interim Order, ¶ 2(g)(i)); and subject and subordinate to the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein), the proceeds of DIP Collateral or Pre-Petition Collateral, any amounts held on account of the DIP Collateral or Pre-Petition Collateral, and all payments and collections received by the Debtors would be applied as follows upon the occurrence of the Termination Declaration Date: first, to pay the DIP Obligations in respect of any cost or expense, reimbursements, fees or indemnities due to the DIP Agent; second, to permanently reduce the DIP Obligations, including, without duplication, any cost or expense, reimbursements, fees or indemnities owing to the DIP Secured Parties, until indefeasibly paid in full in cash and cash collateralize, obtain back to back and/or cancel all outstanding Letters of Credit issued or deemed issued under the DIP Loan Documents, each in accordance with the DIP Loan Documents and this Interim Order or the Final Order, as applicable; third, to pay the Pre-Petition Credit Obligations in respect of any cost or expense, reimbursements, fees or indemnities due to the Pre-Petition Agent; fourth, to permanently reduce the Pre-Petition Credit Obligations owing to the Revolving Credit Lenders, the L/C Issuers (as each term is defined in the Pre-Petition Credit Agreement), in each case, until indefeasibly paid in full in cash (or if applicable, cash collateralized) in accordance with the provisions set forth in the Pre-Petition Credit Agreement and other Pre-Petition Credit Documents; fifth, to permanently reduce the remaining Pre-Petition Credit Obligations in accordance with the provisions of Section 2.12(c) of the Pre-Petition Credit Agreement; and, sixth, to the Debtors for distribution in the manner required by the Bankruptcy Code or order of the Court. (Interim Order, ¶ 2(g)(ii).)
- **Automatic Lifting of the Automatic Stay.** Five business days following the Termination Declaration Date, the DIP Agent would have relief from the automatic stay and would be able to foreclose on, or otherwise realize on, its DIP Liens on all or any portion of the DIP Collateral, including by collecting accounts receivable and applying the proceeds thereof to the DIP Obligations, occupy the Debtors' premises to sell or otherwise dispose of the DIP Collateral or otherwise exercise remedies against the DIP Collateral permitted by applicable non-bankruptcy law. During such five business-day period, the Debtors and the Committee would, by the filing of a motion, be entitled to an

emergency hearing before the Court for the sole purpose of contesting whether an Event of Default has occurred. Unless the Court at such hearing determines that an Event of Default has not occurred and is not continuing, the automatic stay, as to the DIP Agent and the other DIP Secured Parties, would automatically terminate upon the end of such five business-day period. (Interim Order, ¶ 18(b).)

- **Appointment of a Chief Restructuring Officer.** In accordance with the CRO Order, the CRO would (a) have direct and complete access to the Debtors' managers, officers, advisors, employees, and other representatives and, with respect only to matters relating to the Debtors, to Brant Industries' managers, officers, advisors, employees, and other representatives providing services to the Debtors and would at all times be entitled to take all action necessary or appropriate to be fully informed with respect to the Debtors' financial condition, operations, customers, and business prospects, including, but not limited to, direct and complete access to the Brant Parties providing services to the Debtors and the offices of Brant Industries in Greenwich, Connecticut and their books and records relating to the Debtors, and communicate with the Debtors' customers, (b) oversee the 363 Sale on behalf of the Debtors, including the activities of any investment banker retained by the Debtors, (c) respond to all reasonable information requests or inquiries of the DIP Agent, the Pre-Petition Agent, Avenue, and their respective representatives concerning any and all matters relating to the activities of the CRO, including, without limitation, communications outside the presence of any representatives of the Debtors (other than attorneys, where applicable) or the Brant Parties, and (d) provide the DIP Agent, the Pre-Petition Agent, Avenue, and their respective representatives copies of all reports, analyses, materials provided by the CRO to the Debtors, as reasonably requested, in accordance with the terms of the Interim Order. In accordance with applicable law and custom, the CRO would report to the Board of Managers or Directors of each of the Debtors, as applicable. In addition to the foregoing: (i) any disbursement to be made by the Debtors in excess of \$75,000 in accordance with the Approved Budget would require the prior approval of the CRO; (ii) the CRO would have approval rights with respect to (w) any decision or action by the Debtors or Brant Industries relating to any allocation or servicing of business as and between the Debtors, on the one hand, and White Birch and its affiliates, on the other hand from existing customers of the Debtors (that is not consistent in all material respects with historical practice with respect to such customers), (x) any material action that is taken by the Debtors or the Brant Parties that is outside of the ordinary course of business including, without limitation, the shutting down of any product lines, business, or plants, (y) any material transactions between the Debtors, on one hand, and the Brant Parties, on the other hand, and (z) sales of inventory outside of the ordinary course of business or otherwise on non-market terms; (iii) Brant Industries and the Debtors would provide reasonable advance notice to, and would consult with, the CRO before making any decision concerning the allocation or servicing of business as between the Debtors, on the one hand, and White Birch, on the other hand, from new customers; and (iv) the CRO would be entitled to investigate or otherwise evaluate the basis for any decision or action by Brant Industries or the Debtors over which the CRO has approval or consultation rights (as the case may be) described in clauses (ii) and (iii) above, and the Brant Parties providing services to the Debtors would cooperate with any such investigation or evaluation and would provide the CRO with full and complete access to the books and

records of Brant Industries related to the Debtors with respect to any such investigation or evaluation. (Interim Order, ¶ 21(e).) The Debtors and Brant Parties would also agree to certain cooperation obligations set forth in paragraph 21(f) of the Interim Order.

- **Brant Management Agreement.** The Brant Management Agreement would be deemed rejected by the Debtors pursuant to Bankruptcy Code § 365, effective upon the earlier of (i) March 28, 2012, and (ii) the closing of the 363 Credit Bid Agreement or any Alternate APA to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, and the Pre-Petition Required Lenders consent in writing. At all times prior to the Brant Management Agreement Rejection Date, in consideration of the payment of the Post-Petition Brant Management Fee (and expressly conditioned thereon), in accordance with paragraph 2(d) of the Interim Order, Brant Industries would continue to provide services to the Debtors in accordance with the terms of the Brant Management Agreement, it would be deemed to have waived and released any claims arising in respect of any rejection of the Brant Management Agreement (but Brant Industries would not be deemed to have waived any pre-petition claim other than the Brant Rejection Claim). Upon the occurrence of the Brant Management Agreement Rejection Date, the Brant Parties, to the extent applicable, would be deemed to have resigned from any officer or director positions with the Debtors, and the Debtors, on the one hand, and the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, and the Pre-Petition Required Lenders, on the other hand, would work in good faith to choose a reasonably-acceptable independent and disinterested replacement director for any such director positions with the Debtors as soon as practicable following the Brant Management Agreement Rejection Date; provided, however, that the Brant Parties currently serving in a director position with the Debtors would not be deemed to have resigned from such position until a replacement director is appointed in accordance with the Interim Order. Subject to certain limitations, the Approved Budget would include provision for the payment of reasonable and documented post-petition fees, costs, and expenses of Shearman & Sterling LLP, in its capacity as counsel to Brant Industries in connection with these Cases, in an aggregate amount not to exceed \$200,000, to be paid on the closing date of the sale transaction described in clause (ii) below) only if (i) the Brant Parties have performed and complied with all of their post-petition obligations in all material respects under the Brant Management Agreement, this Interim Order, and the Final Order, and (ii) the transactions contemplated by the Credit Bid AP, or any Alternate APA in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders, and the Pre-Petition Required Lenders are consummated. (Interim Order, ¶ 21(d).)
- **Milestones for the 363 Sale Process.** The DIP Credit Agreement and the Interim Order contain several dates by which the Debtors must have fulfilled certain requirements relating to the 363 Sale Process, including filing a motion with this Court seeking approval of a sale, obtaining orders from this Court approving the proposed bidding procedures with respect to and consummating such sale. (DIP Credit Agreement, ¶ 7.13; Exhibit B to the Interim Order.) The Debtors have also agreed to generally cooperate with the DIP Lenders and the Pre-Petition Lenders in connection with this sale process. (DIP Credit Agreement, ¶ 7.16.)



- **Final Hearing.** The Debtors request the scheduling of a hearing to consider entry of the Final Order, at the convenience of the Court. The DIP Credit Agreement requires that the Debtors obtain entry of the Final Order on or prior to the date that is 30 days following the entry of the Interim Order. (DIP Credit Agreement, ¶ 2.8(d).)
- **Post-Closing Matters.** Upon the sale of all or substantially all of the Debtors' assets pursuant to a transaction to which the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent, and the Pre-Petition Required Lenders consent, the DIP Agent would set aside (i) in segregated escrow accounts each for the benefit, individually, of non-professional administrative creditors covered by the Carve-Out, the Debtor Professionals, and the Committee Professionals, proceeds therefrom equal to the maximum amount of accrued and unpaid Carve-Out Claims up to the Carve-Out Cap and (ii) \$50,000 in another segregated escrow account to fund the fees, costs, and expenses incurred in connection with the conversion of these Cases to cases under Chapter 7 of the Bankruptcy Code and the liquidation of the Debtors' estates. In connection with the sale transactions contemplated in the Interim Order, the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, and the Pre-Petition Required Lenders would negotiate a funding arrangement in good faith with respect to wind-down matters, including any plan of liquidation; provided, however, that the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, and the Pre-Petition Required Lenders would not be undertaking any commitment to enter into any such funding arrangement. (Interim Order, ¶ 8(a).)

### **SPECIFIC DISCLOSURES PURSUANT TO LOCAL RULE 4001-2**

23. Local Rule 4001-2 also requires that certain provisions of the DIP Financing be highlighted and that the Debtors provide a justification for the inclusion thereof, and set forth below are the provisions of the DIP Credit Agreement and the Interim Order that are required to be identified in accordance with Local Rule 4001-2:

- **Waiver of Section 506(c) Surcharge.** Local Rule 4001-2(a)(i)(C) requires disclosure of any provisions that seek to waive whatever rights a bankruptcy estate may have under Bankruptcy Code § 506(c). The Interim Order provides that, subject to the entry of the Final Order, no costs or expenses of administration of the Cases or any Successor Case would be charged against or recovered from or against any or all of the DIP Secured Parties, the Pre-Petition Secured Parties, the DIP Collateral, the Pre-Petition Collateral, or the Cash Collateral pursuant to Bankruptcy Code § 506(c) or otherwise, without the prior written consent of the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, or the Pre-Petition Required Lenders. (Interim Order, ¶ 11).
- **Liens on Avoidance Action Proceeds.** Local Rule 4001-2(a)(i)(D) also requires disclosure of any provisions that grant liens on claims and causes of action arising under Chapter 5 of the Bankruptcy Code. The DIP Credit Agreement provides that the Administrative Agent's Collateral would, subject to the entry of the Final Order, include

any Avoidance Actions and Avoidance Action Proceeds. (Interim Order, ¶ 2(i).) The Interim Order also provides that, to the extent of any diminution in value of the pre-petition interests of the Pre-Petition Secured Parties in the Pre-Petition Collateral, the Pre-Petition Agent would be granted replacement liens upon all of the DIP Collateral, which includes Avoidance Actions and Avoidance Action Proceeds, provided that the Avoidance Action Proceeds would be the last Collateral used to pay the DIP Obligations or to satisfy the Adequate Protection granted in the Interim Order. (Interim Order, ¶ 4(a).)

- **Challenge Period.** Local Rule 4001-2(a)(i)(B) requires disclosure of any financial provisions that bind a debtor's estate or other parties with regard to the validity, perfection, or amount of a secured creditors' pre-petition lien or waive claims against a secured creditor without first giving parties-in-interest at least 75 days from the entry of a DIP order, and the creditors' committee at least 60 days from the date of its formation, to investigate such matters. The Interim Order provides for the Challenge Period, which would expire on or before February 29, 2012. (Interim Order, ¶ 7.)

24. The Debtors believe that the three provisions of the DIP Credit Agreement and the Interim Order as to which disclosure is required pursuant to Local Rule 4001-2 are each justified under the circumstances. The Debtors do not believe they would be able to obtain financing from sources other than the DIP Lenders (if at all), who have insisted on the inclusion of these provisions, and as discussed below, the Debtors submit that these provisions should be authorized by this Court in order for the Debtors to receive the benefits of the DIP Financing.

25. Specifically, as set forth in the Holtz Declaration, under the circumstances of these Cases, the Debtors' capital structure, and the Debtors' and their advisors' knowledge of current capital markets, the Debtors do not believe they would be able to obtain any financing for these Cases from sources other than the DIP Lenders. The Debtors further understand that the DIP Lenders would not be willing to enter into the DIP Credit Agreement and provide the Debtors with the necessary financing unless these provisions were included.

26. Moreover, the Debtors do not believe that the inclusion of these provisions would be unduly detrimental to their estates and creditors in the context of these Cases. Initially, the effectiveness of each of these provisions would, by the express terms of the Interim Order

and the DIP Credit Agreement, be subject to the entry of the Final Order. Thus, all parties-in-interest would have a full and timely opportunity to review these provisions prior to the Final Hearing.

27. In addition, the Committee has been fully involved in the negotiations of the DIP Financing, further ensuring the fairness of the terms thereof. The Committee has had an opportunity to review and comment on these provisions, and they were modified to reflect the views of the Committee.

28. Finally, the Debtors hope, as currently contemplated and as more fully set forth in the DIP Credit Agreement and the proposed Interim Order, that they will seek to consummate the 363 Sale in a timely manner, and in connection with such sale, the buyer (either the DIP Lenders or the Pre-Petition Lenders, to the extent they make a credit bid, or a third-party competing bidder) will assume all allowed administrative priority claims set forth in the Approved Budget and incurred prior to the closing date of the 363 Sale and any allowed administrative priority claims set forth in the most recent Weekly Cash Flow Projection that were incurred, but not paid, prior to the closing date of the 363 Sale and agree to pay a material portion of pre-petition trade claims, and as such, the Debtors' unsecured creditors should not be prejudiced by the inclusion of these provisions; instead, the DIP Financing, as a whole, would serve to benefit such creditors more than any likely alternative for these Cases.

### **RELIEF REQUESTED**<sup>6</sup>

29. By this Motion, the Debtors seek entry of (a) the Interim Order, among other things, (i) authorizing the DIP Financing; (ii) authorizing use of Cash Collateral; (iii)

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<sup>6</sup> By separate motion filed contemporaneously herewith, the Debtors have requested an expedited hearing for interim approval of the DIP Financing.

granting Adequate Protection; and (iv) scheduling the Final Hearing; and (b) the Final Order, in the form to be submitted prior to the Final Hearing.

### **BASIS FOR RELIEF**

30. The Debtors believe that they will need immediate liquidity available under the DIP Financing, and without it, they may effectively be forced to shut down their operations and potentially liquidate their assets in a disorderly fashion. It is therefore essential that the Debtors be authorized to access the DIP Financing to provide the necessary working capital to operate as a viable going concern and to maximize value.

31. As such, the DIP Financing would allow the Debtors to continue their ordinary course, day-to-day business operations and satisfy the costs of administering their estates during these Cases, while they pursue an orderly sale process.

#### Obtaining Credit Pursuant to Bankruptcy Code § 364(c)

32. Bankruptcy Code § 364(c) allows a debtor to obtain credit or incur debt on an unsecured super-priority administrative basis and to obtain credit or incur debt secured by liens on unencumbered property and junior liens on encumbered property. The requirement under the Bankruptcy Code for obtaining post-petition credit under Section 364(c) is a finding that the Debtors are “unable to obtain unsecured credit allowable under [Bankruptcy Code] section 503(b)(1).” See In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

33. Courts have applied a three-pronged test to determine whether a debtor has met these statutory requirements:

- (i) The Debtor is unable to obtain unsecured credit under Bankruptcy Code § 364(b) by allowing a lender only a claim for administrative expenses;
- (ii) the transaction is necessary to preserve the assets of the estate; and

- (iii) the terms of the transaction are fair, reasonable, and adequate given the circumstances of the debtor and the prospective lender.

Id.; In re Aqua Assocs., 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (“[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor’s estate and the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere”).

34. As discussed below, the Debtors submit that they satisfy these requirements.

Obtaining Credit Pursuant to Bankruptcy Code § 364(d)

35. If a debtor is unable to obtain post-petition financing under Bankruptcy Code § 364(c), it may obtain credit secured by a “priming” lien under Bankruptcy Code § 364(d). Section 364(d) provides that a court may authorize a debtor’s obtaining or incurring debt secured by a senior or equal lien on property of the estate that is otherwise subject to a lien only if (a) “the [debtor] is unable to obtain such credit otherwise” and (b) “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992).

36. As set forth below, it is not possible for the Debtors to obtain unsecured credit under the circumstances of these Cases. Moreover, the Debtors believe that the Pre-Petition Lenders will consent to the priming of their liens in connection with the DIP Financing.

Use of Cash Collateral Pursuant to Bankruptcy Code § 363(c)

37. Pursuant to Bankruptcy Code § 363(c)(2), a debtor may not use “cash collateral”, as that term is defined in Bankruptcy Code § 363(a), unless “each entity that has an

interest in such cash collateral consents, or ... the court, after notice and a hearing authorizes such use, sale, or lease ... .”

38. Furthermore, Bankruptcy Code § 363(e) provides that this Court may authorize the use of cash collateral if holders of secured claims in such cash collateral are afforded adequate protection. See Harvis Trien & Beck, P.C. v. Fed. Home Loan Mortgage Corp. (In re Blackwood Assocs.), 153 F.3d 61, 67 (2d Cir. 1998).

39. The Pre-Petition Lenders have, in exchange for the Adequate Protection, consented to the Debtors’ use of the Cash Collateral, and the Debtors submit that it is otherwise justified under the circumstances.

Adequate Protection Pursuant to Bankruptcy Code § 361

40. The Bankruptcy Code does not define “adequate protection”, but Bankruptcy Code § 361 provides the following three nonexclusive examples:

- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

There is no “one-size-fits-all” definition of adequate protection, and what constitutes sufficient adequate protection is determined on a case-by-case basis. See Bray v. Shenandoah Fed. Sav. v. Loan Assoc. (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr.

S.D.N.Y. 1986); see also In re JKJ Chevrolet, Inc., 190 B.R. 542, 545 (Bankr. E.D. Va. 1995) (adequate protection is a flexible concept that is determined by considering the facts of each case).

41. The critical purpose of adequate protection is (a) to guard against diminution of a secured creditor's interest in collateral during the period when such collateral is being used by the debtor, In re Kain, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988), and (b) to preserve such secured creditors' position as of the petition date, Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.), 16 F.3d 552, 564 (3d Cir. 1994) (“[T]he whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained for prebankruptcy.”) (quoting In re O'Connor, 808 F.2d 1393, 1396 (10th Cir. 1987)); In re Dunes Casino Hotel, 69 B.R. 784, 793 (Bankr. D.N.J. 1986) (“Adequate protection is designed to preserve the secured creditor's position at the time of the bankruptcy.”) (citation omitted).

42. The Pre-Petition Lenders have consented to the adequacy of the Adequate Protection proposed in the Interim Order, and the Debtors submit that it is otherwise sufficient under the circumstances.

#### The Court Should Approve the DIP Financing

43. As noted above, and as set forth in the Holtz Declaration, through the DIP Financing, including the continuing ability to use Cash Collateral in accordance therewith, the Debtors would be able to continue their operations in Chapter 11 and work toward an orderly marketing and sale process, thereby preserving and maximizing the value of their assets for the benefit of all parties-in-interest. Specifically, the Debtors believe that the DIP Financing would enable them to complete a comprehensive sale process that—regardless of who the ultimate purchaser is—enhances recoveries to all creditors.

44. In contrast, without access to the DIP Financing, the Debtors would likely be unable to operate their business as a going concern over any extended period and could, instead, be forced to shutter their operations to the detriment of all parties-in-interest.

45. For these reasons, the Debtors believe that the terms of the DIP Financing are fair and reasonable and that their entry into the DIP Financing reflects a sound and prudent exercise of their business judgment under the circumstances of these Cases.

#### No Adequate Alternative to the DIP Financing

46. All or substantially all of the Debtors' assets are secured by the Pre-Petition Lenders' liens under the Pre-Petition Credit Agreement, and because of the substantial amount of post-petition financing potentially needed, obtaining a new loan in the form of unsecured debt or by offering prospective lenders an administrative claim is not viable, especially from a third party with no existing interest or position in the Debtors to protect.

47. Moreover, the Debtors understand that the Pre-Petition Lenders would not agree to the priming of their liens other than in the context of the DIP Financing, and any non-consensual attempt to prime the liens of the Pre-Petition Lenders would be costly and distracting, in addition to likely being unsuccessful, with potentially-disastrous consequences for the Debtors and their estates.

48. Thus, the Debtors believe that approval of the DIP Financing on the terms set forth in the DIP Loan Documents is appropriate and justified.

#### The DIP Financing is Necessary to Preserve the Value of the Debtors' Estates

49. If the Debtors do not obtain additional liquidity to fund their ongoing operations, they would likely need to curtail their operations, which would be damaging to the value of their business enterprise, and the Debtors' assets would, in all probability, be sold for less than the Debtors' going-concern value, to the detriment of all parties-in-interest. See In re



Sun Healthcare Group, Inc., 245 B.R. 779, 781 (Bankr. D. Del. 2000); see also In re Gen. Growth Props, Inc., 423 B.R. 716, 725 (S.D.N.Y. 2010).

50. For these reasons alone, the Debtors believe that the DIP Financing is necessary to maximize value.

The Terms of the DIP Financing are Fair, Reasonable, and Appropriate

51. Under the circumstances of these Cases, the Debtors believe that the terms of the DIP Financing are fair and reasonable.

52. As set forth in the Holtz Declaration, given the Debtors' current capital structure, the fact that substantially all of their assets are likely encumbered by the Pre-Petition Lenders' liens, and the Pre-Petition Lenders are unwilling to permit the priming of those liens outside of the DIP Financing, the Debtors and their advisors believed that any attempt to obtain post-petition financing from any party other than the Pre-Petition Lenders would have been futile.

53. Specifically, the Debtors were convinced that no lender would be willing to provide a stand-alone DIP facility to which the Pre-Petition Lenders would consent or for which the Debtors could otherwise obtain approval in a timely manner. Obtaining such financing without consent would, as mentioned above, likely have resulted in an expensive, difficult, and distracting priming fight, as well as a similarly-contentious battle over the use of Cash Collateral.

54. In view of such a potentially-disastrous scenario and the Debtors' immediate need for liquidity, the Debtors and their professionals concluded that the DIP Financing, which is the result of many weeks of arms'-length negotiations between the Debtors and the DIP Lenders, prior to and after the Petition Date—as well as the Committee after the Petition Date—best suits the Debtors' current pressing need for funding for these Cases. During

these negotiations, the Debtors and the DIP Lenders each were represented by separate experienced professionals, helping to ensure that the terms of the DIP Financing were negotiated, proposed, and entered into by the Debtors and the DIP Lenders without collusion, in good faith, and at arm's length.

55. Also, the Committee has been involved in the negotiations of the DIP Financing, and other parties-in-interest will be able to review the proposed DIP Financing prior to the Final Hearing (if not prior to the Interim Hearing), further ensuring the fairness of the ultimate terms thereof.

#### The Court Should Approve the Use of Cash Collateral

56. Pursuant to Bankruptcy Code § 363(e), the use of cash collateral by a debtor is conditioned upon the provision of adequate protection. Here, the Adequate Protection is more than fair, and the Debtors' use of Cash Collateral would not, in any event, prejudice any party-in-interest because, absent the use of Cash Collateral, the Debtors' operations could be adversely impacted.

57. The Debtors have agreed to provide the Pre-Petition Lenders with the Adequate Protection, which is intended to protect the Pre-Petition Lenders from any diminution in the value of their collateral, including Cash Collateral, from the Petition Date through the continuation of these Cases. The Adequate Protection would also serve to compensate the Pre-Petition Lenders for the consensual priming of their liens under the DIP Financing. See Swedeland, 16 F.3d at 522; Dunes Casino Hotel, 69 B.R. at 793.

58. The Debtors submit that the Adequate Protection is fair and reasonable, and the Debtors believe that the Pre-Petition Lenders have consented to the Debtors' use of Cash Collateral in exchange therefor.

### Application of Business Judgment Standard

59. Courts routinely defer to a debtor's business judgment on most business decisions, including whether and on what terms to borrow money, unless such decision is arbitrary and capricious. See In re Trans World Airlines, Inc., 163 B.R. 964, 974 (Bankr. D. Del. 1994). In fact, "[m]ore exacting scrutiny [than the business judgment standard] would slow the administration of the Debtor's estate and increase its costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985).

60. After appropriate investigation and analysis, the Debtors and their professionals have concluded that the DIP Financing provides the best alternative available under the circumstances of these Cases to provide the Debtors with the opportunity to function and maintain their going-concern value, while marketing their assets and maximizing value for parties-in-interest. Thus, the Debtors submit that they have exercised their sound business judgment in determining that entry into the DIP Financing is appropriate under the circumstances, and hence, they believe that the DIP Financing and other terms of the Interim Order are justified.

61. Accordingly, for the reasons set forth above, the Debtors submit that the requested relief is in their best interest and the best interests of their estates and creditors and, therefore, should be granted.

### **WAIVER OF BANKRUPTCY RULE 6004(g)**

62. On account of the immediate and pressing need for the Debtors to obtain post-petition financing to preserve the value of their estates, the Debtors request a waiver of the

14-day stay set forth in Bankruptcy Rule 6004(g), and any other similar stays under the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any applicable orders of this Court, for effectiveness of the Interim Order.

**NOTICE**

63. Notice of this Motion has been given via overnight delivery service, e-mail, facsimile, and/or hand delivery, as appropriate, to the United States Trustee; counsel to the Committee; counsel to the agent for the Pre-Petition Lenders; counsel to the DIP Agent, counsel to the Debtors' management company; any parties that have filed notices of appearance and requested service of pleadings in these Cases; and any other known secured creditors of the Debtors. Due to the urgency of the circumstances, the Debtors submit that no other or further notice of this Motion is required.

**NO PRIOR APPLICATION**

64. No previous motion for the relief sought herein has been made to this Court or to any other court.

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**CONCLUSION**

WHEREFORE, the Debtors request immediate entry of the Interim Order and subsequent entry of the Final Order, in the form submitted prior to the Final Hearing, and the granting of such other and further relief as this Court may deem just and proper.

Dated: December 15, 2011  
Wilmington, Delaware

Respectfully submitted,

/s/ Lee E. Kaufman

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*Attorneys for the Debtors and  
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**EXHIBIT A**

**Draft of DIP Credit Agreement**

SENIOR SECURED PRIMING AND SUPERPRIORITY  
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

Dated as of December [\_\_\_], 2011

among

SP NEWSPRINT CO., LLC, AS A DEBTOR AND DEBTOR-IN-POSSESSION

SP NEWSPRINT HOLDINGS LLC,

SP RECYCLING CORPORATION

and

SEP TECHNOLOGIES, L.L.C.,

EACH AS A DEBTOR AND DEBTOR-IN-POSSESSION,

THE LENDERS PARTY HERETO

and

GENERAL ELECTRIC CAPITAL CORPORATION,  
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT

◆◆◆

GE CAPITAL MARKETS, INC.,  
AS SOLE LEAD ARRANGER AND SOLE BOOKRUNNER

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THIS SENIOR SECURED PRIMING AND SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (THIS "AGREEMENT"), DATED AS OF DECEMBER [ ], 2011, IS ENTERED INTO AMONG SP NEWSPRINT CO., LLC, A GEORGIA LIMITED LIABILITY COMPANY AND A DEBTOR AND DEBTOR-IN-POSSESSION UNDER THE BANKRUPTCY CODE (AS DEFINED BELOW) (THE "BORROWER"), SP NEWSPRINT HOLDINGS LLC, A DELAWARE LIMITED LIABILITY COMPANY AND A DEBTOR AND DEBTOR-IN-POSSESSION UNDER THE BANKRUPTCY CODE ("HOLDINGS"), SP RECYCLING CORPORATION, A GEORGIA CORPORATION AND A DEBTOR AND DEBTOR-IN-POSSESSION UNDER THE BANKRUPTCY CODE, SEP TECHNOLOGIES, L.L.C., A GEORGIA LIMITED LIABILITY COMPANY AND A DEBTOR AND DEBTOR-IN-POSSESSION UNDER THE BANKRUPTCY CODE, THE LENDERS (AS DEFINED BELOW) AND GENERAL ELECTRIC CAPITAL CORPORATION ("GE CAPITAL"), AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT FOR THE LENDERS (IN SUCH CAPACITY, AND TOGETHER WITH ITS SUCCESSORS AND PERMITTED ASSIGNS, THE "ADMINISTRATIVE AGENT").

W I T N E S S E T H:

WHEREAS, on November 15, 2011 (the "Petition Date"), the Borrower, Holdings and each other Guarantor (as defined below) (each a "Debtor" and collectively, the "Debtors"), commenced Chapter 11 Case Nos. 11-13649 through 11-13652, administratively consolidated as Chapter 11 Case No. 11-13649 (CSS) (each a "Case" and collectively, the "Cases") under the Bankruptcy Code (as defined below) with the United States Bankruptcy Court for the District of Delaware, (the "Bankruptcy Court");

WHEREAS, from and after the Petition Date, the Debtors will continue to operate their respective businesses and to manage their respective properties as debtors and debtors-in-possession pursuant to Section 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on November 16, 2011, the Debtors filed an application (the "AP Services Application") [ECF No. 25] seeking to employ and to retain AP Services, LLC, as crisis managers, and to appoint certain officers as interim managers for the Debtors on terms and conditions satisfactory to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders;

WHEREAS, on November 17, 2011, the Bankruptcy Court entered an order [ECF No. 57] directing the joint administration of the Cases and entered the Interim Order Approving Debtors' Motion for Order (I) Authorizing the Use of Cash Collateral, (II) Granting Adequate Protection to Pre-Petition Secured Lenders and (III) Granting Related Relief [ECF No. 54];

WHEREAS, on November 29, 2011, the United States Trustee appointed a statutory committee of unsecured creditors (the "Committee");

WHEREAS, on December 1, 2011, the Debtors filed the Notice of Filing of Amended Budget For Extension of Interim Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection to Pre-Petition Secured Lenders, and (III) Granting Related Relief [ECF No. 120];

WHEREAS, the AP Services Application was approved by the Bankruptcy Court on December 8, 2011 [ECF No. 168];

WHEREAS, prior to the Petition Date, the Borrower received financing pursuant to that certain Credit Agreement dated as of March 31, 2008 (as amended, supplemented, restated or otherwise modified from time to time prior to the date hereof, the “Pre-Petition Credit Agreement”), among the Borrower, Holdings, the other Loan Parties party thereto, GE Capital, as administrative agent (the “Pre-Petition Agent”), GE Capital Markets, Inc., as sole lead arranger and bookrunner, and the various lenders from time to time party thereto (the “Pre-Petition Lenders”); and

WHEREAS, the Borrower has requested, and the Lenders have agreed to make available to the Borrower, a senior secured priming and superpriority debtor-in-possession delayed-draw term loan credit facility in an original principal amount (subject to entry of the Final Order (as defined below)) of \$20,000,000, which may be increased to an aggregate principal amount not exceeding \$25,000,000 with the consent of the Administrative Agent and the Required Lenders in their respective sole discretion plus the DIP Expenses Amount, the proceeds of which will be used to fund working capital and certain other expenses of the Borrower and the Guarantors (as defined below) during the pendency of the Cases in accordance with the Budget (as defined below).

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

## ARTICLE I DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

Section 1.1     Defined Terms. As used in this Agreement, the following terms have the following meanings:

“363 Asset Purchase Agreement” means an asset purchase agreement pursuant to which the Pre-Petition Agent (or its designee), on behalf of the Pre-Petition Secured Parties, agrees to “credit bid” all or a portion of their claims in respect of the Pre-Petition Credit Obligations as consideration for the purchase of all or substantially all of the assets of the Debtors, which credit bid shall not include any breakup fee and shall provide for the assumption or payment of (w) all allowed and unpaid administrative priority claims set forth in the Budget and incurred prior to the closing date of the 363 Sale and any allowed administrative priority claims set forth in the most recent Weekly Cash Flow Projections that were incurred but not paid prior to the closing date of the 363 Sale (for the avoidance of doubt, this shall include all allowed claims under Section 503(b)(9) of the Bankruptcy Code even if said 503(b)(9) claims are not provided for in an approved Budget (subject to an agreed upon procedure reasonably acceptable to the Administrative Agent, the Required Lenders, the Pre-Petition Agent, the Pre-Petition Required Lenders and the Committee), and shall exclude all Debtor Professional Fees or Committee Professional Fees in excess of the Carve-Out Cap), (x) all allowed and unpaid non-insider prepetition trade claims incurred in the ordinary course to the extent set forth in a schedule, in form and substance satisfactory to the Administrative Agent, the Pre-Petition Agent, the Required Lenders and the Pre-Petition Required Lenders in their respective sole discretion, to be attached to such 363 Asset Purchase Agreement, (y) all Avoidance Actions arising under Section 547 of the Bankruptcy Code and related state law causes of action, in each case solely with respect to actions against trade creditors (the “Assumed Preference Actions”) and all such Assumed Preference Actions shall be deemed released on the closing date of the 363 Sale; provided, however, that this clause (y) shall not apply to any Assumed Preference Actions against the Brant Parties or their respective subsidiaries and affiliates, and (z)

such other allowed and unpaid pre-petition claims to which the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their respective sole discretion.

“363 Sale” means the Sale of all or substantially all of the assets of the Debtors under section 363 of the Bankruptcy Code.

“363 Sale Termination Date” means the date on which the Administrative Agent delivers to the Debtors’ lead counsel, the U.S. Trustee, and Lowenstein Sandler PC, as lead counsel to the Committee, a written notice notifying such parties that (a) except to the extent the Secured Parties or the Pre-Petition Secured Parties have caused the Debtors to do so in violation of the Interim Order, the Final Order or the Loan Documents, the Debtors cease to diligently pursue the 363 Sale in accordance with the terms set forth in the Interim Order, Final Order and in the Loan Documents, as determined in the discretion of the Administrative Agent (with the consent of the Required Lenders) or the Pre-Petition Agent (with the consent of the Pre-Petition Required Lenders), as applicable; provided, however, that the Debtors reserve their rights to challenge whether they diligently pursued the 363 Sale, or (b) the Administrative Agent requests that the Debtors pursue other options for selling the Debtors’ assets, including through (x) multiple sales of the Debtors’ various mills, properties, business or other assets, other than any sale contemplated by the 363 Sale or (y) any sale or sales to a purchaser or purchasers other than the Administrative Agent, the Lenders, the Pre-Petition Agent and the Pre-Petition Lenders.

“Acquisition Agreement” means the Partnership Purchase Agreement, dated as of March 31, 2008, by and among the Borrower, Holdings, SP Newsprint Co. and the other parties party thereto.

“Adequate Protection Replacement Liens” means such Liens on the Collateral granted to the Pre-Petition Agent (for the benefit of itself and the other Pre-Petition Secured Parties) to the extent of any diminution in value of the pre-petition interests of the Pre-Petition Secured Parties in the Pre-Petition Collateral pursuant to section 361, 363(e) and 364 of the Bankruptcy Code, which Liens shall be subject and subordinate only to the Liens under the Loan Documents, the Pre-Petition Senior Permitted Encumbrances, the Pre-Petition First Priority Liens and the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order), to the extent expressly provided in the Loan Documents and the Interim Order or Final Order, as applicable.

“Administrative Agent” has the meaning specified in the preamble hereto.

“Affected Lender” has the meaning specified in Section 2.18.

“Affiliate” means, with respect to any Person, each officer, director, general partner or joint-venturer of such Person and any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person; provided, however, that no Secured Party shall be an Affiliate of the Borrower. For purpose of this definition, “control” means the possession of either (a) the power to vote, or the beneficial ownership of, 10% or more of the Voting Stock of such Person or (b) the power to direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agent Escrow Account” means a non-interest bearing deposit account in the name of the Administrative Agent and under the sole control (as defined in the applicable UCC) of the Administrative Agent, with respect to which the Administrative Agent shall be the only Person

authorized to give instructions or make deposits or withdrawals and with respect to which, for the avoidance of doubt, the Borrower shall not be permitted to give any instructions or make deposits or withdrawals.

“Agreement” means this Credit Agreement.

“Alternate 363 Asset Purchase Agreement” means an asset purchase agreement (other than the 363 Asset Purchase Agreement) that provides for the assumption or payment of the claims set forth in clauses (w), (x), (y) and (z) in the definition of “363 Asset Purchase Agreement” and which asset purchase agreement is in form and substance satisfactory to the Administrative Agent, the Pre-Petition Agent, the Required Lenders and the Pre-Petition Required Lenders in their respective sole discretion, providing for the purchase of all or substantially all of the assets of the Debtors, entered into between the Debtors and the Winning Bidder at the Auction.

“Applicable Margin” means, with respect to Base Rate Loans, 6.50% per annum and, with respect to Eurodollar Rate Loans, 7.50% per annum.

“Applicable Minimum Collection Percentage” has the meaning specified in Section 5.1(b).

“Approved Fund” means, with respect to any Lender, any Person (other than a natural Person) that (a) 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 business and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than a natural Person) that administers or manages such Lender.

“Arrangement Fee” has the meaning specified in Section 2.11.

“Assignment” means an assignment agreement entered into by a Lender, as assignor, and any Person, as assignee, pursuant to the terms and provisions of Section 11.2 (with the consent of any party whose consent is required by Section 11.2), accepted by the Administrative Agent, in substantially the form of Exhibit A, or any other form reasonably approved by the Administrative Agent.

“Auction” means an auction held in connection with the 363 Sale and in accordance with the provisions set forth in the Sale Procedures Order.

“Avenue” means Avenue Investments, L.P.

“Avoidance Action Proceeds” means the proceeds of Avoidance Actions, including proceeds received through demand, settlement or trial of Avoidance Actions.

“Avoidance Actions” means any claims, demands, actions or causes of action available to the Debtors or their bankruptcy estates through the exercise of the powers granted pursuant to sections 502(d), 544, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law.

“Bankruptcy Code” means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. §101, et seq.).

“Bankruptcy Court” has the meaning specified in the recitals hereto.

“Base Rate” means, for any day, a rate per annum equal to the highest of (a) the rate last quoted by The Wall Street Journal as the “Prime Rate” in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Administrative Agent) or any similar release by the Federal Reserve Board (as determined by Administrative Agent), (b) the sum of 3.00% per annum and the Federal Funds Rate, and (c) the sum of (x) the Eurodollar Base Rate calculated for each such day based on an Interest Period of three months determined two (2) Business Days prior to such day (but for the avoidance of doubt, not less than 3.50% per annum), plus (y) the excess of the Applicable Margin for Eurodollar Rate Loans over the Applicable Margin for Base Rate Loans, in each instance, as of such day; provided, however, that, in no event shall the Base Rate be less than 4.50%. Any change in the Base Rate due to a change in any of the foregoing shall be effective on the effective date of such change in the Federal Funds Rate or the Eurodollar Base Rate for an Interest Period of three months.

“Base Rate Loan” means any Loan that bears interest based on the Base Rate.

“Benefit Plan” means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) maintained or contributed to by any Group Member (or with respect to a Benefit Plan subject to Title IV of ERISA, any ERISA Affiliate).

“Bidding Procedures” means the bidding procedures to implement the 363 Sale, in the form attached to the order of the Bankruptcy Court approving the bidding procedures and in form and substance satisfactory to the Administrative Agent, the Required Lenders, the Pre-Petition Required Lenders, and the Pre-Petition Agent in their respective sole discretion.

“Black Diamond” means Black Diamond Capital Holdings, L.L.C. and any of their Affiliates, officers, directors, stockholders, managers, employees, representatives or agents.

“Borrower” has the meaning specified in the preamble hereto.

“Borrowing” means a borrowing consisting of Loans made on the same day by the Lenders according to their respective Commitments as set forth by the Borrower on the Notice of Borrowing therefor.

“Borrowing Base Certificate” means a certificate to be executed and delivered from time to time by the Borrower in the form attached to this Agreement as Exhibit G.

“Brant” means Peter Brant and any of his Family Members.

“Brant Accrued Fee” has the meaning specified in the definition of Brant Management Fee.

“Brant Agreement” means that certain Management and Administrative Services Agreement, dated as of March 31, 2008, between Brant Industries, Inc. and the Borrower, as



amended or otherwise modified with the consent of the Pre-Petition Required Lenders through the Petition Date.

“Brant Management Agreement Rejection Date” has the meaning specified in the Interim Order.

“Brant Management Fee” means the monthly management fee equal to the lesser of (a) 2.00% of the Borrower’s Consolidated gross sales for each month (the “Brant Monthly Fee”) and (b) the sum of \$750,000 (prorated for a partial month) (the “Brant Monthly Cap”) plus the cumulative unused portion(s) of any prior Brant Monthly Caps subsequent to the Petition Date (the cumulative amount by which the aggregate Brant Monthly Fees exceeds the aggregate Brant Monthly Caps in accordance with any Budget, the “Brant Accrued Fee”), payable in cash to Brant Industries, Inc. pursuant to the Brant Agreement in cash solely to the extent permitted under the Budget.

“Brant Monthly Cap” has the meaning specified in the definition of Brant Management Fee.

“Brant Monthly Fee” has the meaning specified in the definition of Brant Management Fee.

“Brant Parties” means, collectively, Brant or Brant Industries, Inc. or any of its affiliates, officers, directors, stockholders, managers, employees, representatives or agents.

“Budget” means the Initial Budget, as supplemented by each Proposed Budget pursuant to and in accordance with Section 6.1(d) hereof; provided that, without the prior written consent of the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, which may be withheld in their respective sole discretion, other than with respect to the Brant Management Fee, the Budget shall not include any payments to any Brant Parties.

“Budgeted Period” has the meaning specified in Section 5.1(c).

“Business Day” means any day of the year that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York City and, when determined in connection with notices and determinations in respect of any Eurodollar Rate or Eurodollar Rate Loan or any funding, conversion, continuation, Interest Period or payment of any Eurodollar Rate Loan, that is also a day on which dealings in Dollar deposits are carried on in the London interbank market.

“Capital Expenditures” means, for any Person for any period, the aggregate of all expenditures, whether or not made through the incurrence of Indebtedness, by such Person and its Subsidiaries during such period for the acquisition, leasing (pursuant to a Capital Lease), construction, replacement, repair, substitution or improvement of fixed or capital assets or additions to equipment, in each case required to be capitalized under GAAP on a Consolidated balance sheet of such Person, excluding (a) interest capitalized during construction, (b) expenditures that are accounted for as capital expenditures of such Person and that actually are paid for by a third party (excluding Holdings, the Borrower or any Subsidiary thereof) due to indemnification, reimbursement or similar obligations and for which none of Holdings, the Borrower or any Subsidiary thereof has provided or is required to provide or incur, directly or

indirectly, any consideration or obligation to such third party or any other Person (whether before, during or after such period) and (c) the book value of any asset owned by such Person prior to or during such period to the extent that such value is included as a capital expenditure during such period as a result of such Person reusing or beginning to reuse such asset during such period without a corresponding expenditure actually having been made in such period; provided, that (i) any expenditure necessary in order to permit such asset to be reused shall be included as a Capital Expenditure during the period that such expenditure actually is made and (ii) such book value shall have been included in Capital Expenditures when such asset was originally acquired.

“Capital Lease” means, with respect to any Person, any lease of, or other arrangement conveying the right to use, any property (whether real, personal or mixed) by such Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with GAAP.

“Capitalized Lease Obligations” means, at any time, with respect to any Capital Lease, any lease entered into as part of any Sale and Leaseback Transaction of any Person or any synthetic lease, the amount of all obligations of such Person that is (or that would be, if such synthetic lease or other lease were accounted for as a Capital Lease) capitalized on a balance sheet of such Person prepared in accordance with GAAP.

“Carve-Out” has the meaning specified in the Interim Order or Final Order, as applicable.

“Carve-Out Cap” has the meaning specified in the Interim Order or Final Order, as applicable; provided that, after the payment of all the Debtor Professional Fees and the Committee’s Professional Fees up to the Carve-Out Cap, to the extent there remains any unused retainers held by such professionals, such unused retainers shall be returned first to the Secured Parties until the Obligations are indefeasibly paid in full in cash and second to the Pre-Petition Secured Parties until the Pre-Petition Obligations are indefeasibly paid in full in cash.

“Carve-Out Claims” has the meaning specified in the Interim Order or Final Order, as applicable.

“Carve-Out Trigger Notice” means a written notice delivered by the Administrative Agent to Borrower’s lead counsel, the U.S. Trustee for the Cases and lead counsel to any statutory committee appointed in the Cases following the occurrence of and during the continuation of an Event of Default hereunder or under the Interim Order, expressly stating that the Termination Declaration Date has occurred and that the Carve-Out is invoked as of the next Business Day.

“Case” and “Cases” have the meanings specified in the recitals hereto.

“Cash Collateral Account” means a deposit account or securities account in the name of the Borrower and under the sole control (as defined in the applicable UCC) of the Administrative Agent and (a) in the case of a deposit account, from which the Borrower may not make withdrawals except as set forth in Section 2.2(d) and (b) in the case of a securities account, with respect to which entitlement orders with respect thereto shall only be given in accordance with Section 2.2(d).

“Cash Equivalents” means (a) any readily-marketable securities (i) issued by, or directly, unconditionally and fully guaranteed or insured by the United States federal government or (ii) issued by any agency of the United States federal government the obligations of which are fully backed by the full faith and credit of the United States federal government, (b) any readily-marketable direct obligations issued by any other agency of the United States federal government, any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case having a rating of at least “A-1” from S&P or at least “P-1” from Moody’s, (c) any commercial paper rated at least “A-1” by S&P or “P-1” by Moody’s and issued by any Person organized under the laws of any state of the United States, (d) any Dollar-denominated time deposit, insured certificate of deposit, overnight bank deposit or bankers’ acceptance issued or accepted by (i) any Lender or Affiliate of any Lender or (ii) any commercial bank that is (A) organized under the laws of the United States, any state thereof or the District of Columbia, (B) “adequately capitalized” (as defined in the regulations of its primary federal banking regulators) and (C) has Tier 1 capital (as defined in such regulations) in excess of \$250,000,000 and (e) shares of any United States money market fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clause (a), (b), (c) or (d) above with maturities as set forth in the proviso below, (ii) has net assets in excess of \$500,000,000 and (iii) has obtained from either S&P or Moody’s the highest rating obtainable for money market funds in the United States; provided, however, that the maturities of all obligations specified in any of clauses (a), (b), (c) and (d) above shall not exceed 365 days.

“CERCLA” means the United States Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.).

“Chief Restructuring Officer” means Alan D. Holtz of AlixPartners in his capacity as chief restructuring officer of the Borrower or any successor chief restructuring officer, who shall be, in the case of a replacement that is an employee of AlixPartners, reasonably acceptable to the Administrative Agent and Avenue and in the case of any other replacement, acceptable to the Administrative Agent and Avenue, in each case, retained pursuant to the CRO Order approving the appointment of the Chief Restructuring Officer, such order to contain, subject to applicable law, such terms and conditions as are acceptable to the Administrative Agent and Required Lenders in their respective sole discretion, but which terms and conditions shall include the rights and responsibilities as set forth in Section 7.17 hereof.

“Closing Date” means the first date on which any Loan is made or made available after the conditions precedent set forth in Section 3 are satisfied.

“Closing Fee” has the meaning specified in Section 2.11.

“Code” means the U.S. Internal Revenue Code of 1986, as amended from time to time (unless otherwise expressly provided herein).

“Collateral” means all property and interests in property and proceeds thereof now owned or hereafter acquired by any Loan Party in or upon which a Lien is granted or purported to be granted pursuant to any Loan Document including all cash and cash equivalents (whether maintained with the Administrative Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights,

supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, rights under section 506(c) of the Bankruptcy Code (solely upon entry of the Final Order), all other collateral and all other “property of the estate” (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, and all rents, products, substitutions, accessions, profits, replacements and cash and non-cash proceeds of all of the foregoing and including, subject to the entry of the Final Order, any Avoidance Action Proceeds.

“Commitment” means, with respect to any Lender, such Lender’s Interim Date Loan Commitment and Delayed Draw Commitment.

“Committee” has the meaning specified in the recitals hereto.

“Committee Professional Fees” has the meaning specified in the Interim Order or Final Order, as applicable.

“Committee Professionals” has the meaning specified in the Interim Order or Final Order, as applicable.

“Consolidated” means, with respect to any Person, the accounts of such Person and its Subsidiaries consolidated in accordance with GAAP.

“Consolidated EBITDA” means, with respect to any Person for any period, (a) the Consolidated Net Income of such Person for such period plus (b) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication, (i) any provision for United States federal income taxes or other taxes measured by income, profits or capital (including state franchise and similar taxes), (ii) Consolidated Interest Expense, amortization of debt discount and commissions and other fees and charges associated with Indebtedness, (iii) any loss from extraordinary items, (iv) any depreciation, depletion and amortization expense, (v) any aggregate net loss on the Sale of property (other than accounts (as defined under the applicable UCC) and inventory) and (vi) any other non-cash expenditure, charge or loss for such period (other than any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to accounts and inventory), including the amount of any compensation deduction as the result of any grant of Stock or Stock Equivalents to employees, officers, directors or consultants and minus (c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income and without duplication, (i) any credit for United States federal income taxes or other taxes measured by net income, (ii) any interest income, (iii) any gain from extraordinary items and any other non-recurring gain, (iv) any aggregate net gain from the Sale of property (other than accounts (as defined in the applicable UCC) and inventory) by such Person, (v) any other non-cash gain, including any reversal of a charge referred to in clause (b)(vi) above by reason of a decrease in the value of any Stock or Stock Equivalent, and (vi) any other cash payment in respect of expenditures, charges and losses that have been added to Consolidated EBITDA of such Person pursuant to clause (b)(vi) above in any prior period.

“Constituent Documents” means, with respect to any Person, collectively and, in each case, together with any modification of any term thereof, (a) the articles of incorporation, certificate of incorporation, constitution or certificate of formation of such Person, (b) the bylaws, operating agreement or joint venture agreement of such Person, (c) any other constitutive, organizational or governing document of such Person, whether or not equivalent, and (d) any other

document setting forth the manner of election or duties of the directors, officers or managing members of such Person or the designation, amount or relative rights, limitations and preferences of any Stock of such Person.

“Contractual Obligation” means, with respect to any Person, any provision of any Security issued by such Person or of any document or agreement (other than a Loan Document) to which such Person is a party or by which it or any of its property is bound or to which any of its property is subject.

“Control Agreement” means, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance satisfactory to the Administrative Agent in its sole discretion, among the Administrative Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant “control” (as defined under the applicable UCC) over such account to the Administrative Agent.

“Controlled Deposit Account” means each deposit account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Administrative Agent, such approval not to be unreasonably withheld.

“Controlled Securities Account” means each securities account or commodity account (including all financial assets held therein and all certificates and instruments, if any, representing or evidencing such financial assets) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a securities intermediary or commodity intermediary approved by the Administrative Agent, such approval not to be unreasonably withheld.

“Copyrights” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to copyrights and all mask work, database and design rights, whether or not registered or published, all registrations and recordations thereof and all applications in connection therewith.

“Corporate Chart” means a document in form reasonably acceptable to the Administrative Agent and setting forth, as of a date set forth therein, for each Person that is a Loan Party, that is subject to Section 7.10 or that is a Subsidiary or joint venture of any of them, (a) the full legal name of such Person, (b) the jurisdiction of organization and any organizational number and tax identification number of such Person, (c) the location of such Person’s chief executive office (or, if applicable, sole place of business) and (d) the number of shares of each class of Stock of such Person (other than Holdings) authorized, the number outstanding and the number and percentage of such outstanding shares for each such class owned, directly or indirectly, by any Loan Party or any Subsidiary of any of them.

“Credit Bid” means a credit bid pursuant to Sections 363(k) and 1129(b)(2)(A)(ii) of the Bankruptcy Code and subject to the Interim Order and the Final Order by the Pre-Petition Agent (on behalf of the Pre-Petition Secured Parties) or the Administrative Agent (on behalf of the Secured Parties) to acquire all or substantially all of the assets of the Loan Parties through the 363 Sale.

“CRO Order” means an order approving the engagement and retention of the Chief Restructuring Officer, which order shall be in form and substance acceptable to the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders.

“Customary Permitted Liens” means, with respect to any Person, any of the following:

(a) Liens (i) with respect to the payment of taxes, assessments or other governmental charges that are in each case not yet due or (ii) of suppliers, carriers, materialmen, warehousemen, workmen, repairmen or mechanics and other similar Liens, in each case imposed by law or arising in the ordinary course of business, and, for each of the Liens in clauses (i) and (ii) above for amounts that are not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(b) Liens (i) of a collection bank on items in the course of collection arising under Section 4-208 of the UCC as in effect in the State of New York or any similar section under any applicable UCC or any similar Requirement of Law of any foreign jurisdiction or (ii) arising by virtue of any statutory or common law provision relating to banker’s liens, rights of setoff or similar rights as to deposit accounts or other funds maintained with a creditor depository institution;

(c) pledges, cash deposits or other Liens (that are non-consensual) made in the ordinary course of business (i) in connection with workers’ compensation, unemployment insurance or other types of social security benefits (other than any Lien imposed by ERISA), (ii) to secure the performance of bids, tenders, leases (other than Capital Leases) sales or other trade contracts (other than for the repayment of borrowed money) or (iii) made in lieu of, or to secure the performance of, surety, customs, reclamation or performance bonds (in each case not related to judgments or litigation);

(d) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.1(e) and pledges or cash deposits made in lieu of, or to secure the performance of, judgment or appeal bonds in respect of such judgments and proceedings;

(e) Liens (i) arising by reason of zoning restrictions, protrusions, easements, licenses, reservations, restrictions, covenants, rights-of-way, encroachments, minor defects or irregularities in title (including leasehold title) and other similar encumbrances on the use of real property or (ii) consisting of leases, licenses or subleases granted by a lessor, licensor or sublessor on its property (in each case other than Capital Leases) otherwise permitted under Section 8.4 that, for each of the Liens in clauses (i) and (ii) above, do not, in the aggregate, materially (x) impair the value or marketability of such real property or (y) interfere with the ordinary conduct of the business conducted and proposed to be conducted at such real property;

(f) Liens of landlords or lessors and mortgagees of landlords or lessors (i) arising by statute or under any lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property

located on the real property leased or subleased from such landlord, (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and (iv) for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(g) deposits by or on behalf of any Group Member and security interests on assets related to a particular performance bond granted to the surety providing such performance bond, in each case, to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) advance deposits (including extension payments) arising after the Closing Date in connection with any Investment expressly permitted by Section 8.3;

(i) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(j) Liens consisting of licenses of Intellectual Property in the ordinary course of business; provided that such Liens do not materially diminish the value of the Collateral;

(k) to the extent permitted under any applicable account control agreement or similar agreement, bankers' Liens, rights of setoff and other similar Liens existing with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or any of its Subsidiaries;

(l) the filing of financing statements as a precautionary measure in connection with permitted operating leases;

(m) leases of the properties of any Loan Party in the ordinary course of business, to the extent such leases are permitted under this Agreement; and

(n) the title and interest of a lessor or sublessor in and to personal property leased or subleased, in each case extending only to such personal property.

“Debtor” and “Debtors” have the meanings specified in the recitals hereto.

“Debtor Diligence Information” means any information obtained by the Lenders and the Administrative Agent pursuant to this Agreement or any Loan Document relating to the proposed 363 Sale or any other proposed transaction involving any of the Debtors, including without limitation, (i) any information, reports or other diligence materials obtained by the Lenders and the Administrative Agent in connection with any due diligence performed in pursuing a credit bid and (ii) any information, reports or other diligence materials provided to the Lenders and the Administrative Agent by the Borrower, the Chief Restructuring Officer, any Debtor, any of the Brant Parties (other than White Birch to the extent the information has no relation to the Debtors or its subsidiaries or their respective businesses), or any of their respective representatives or advisors in connection with this Agreement, disclosures regarding the business and financial condition of the Debtors, the 363 Sale or any other proposed transaction involving any of the Debtors.

“Debtor Professionals” has the meaning specified in the Interim Order or Final Order, as applicable.

“Debtors’ Professional Fees” has the meaning specified in the Interim Order or Final Order, as applicable.

“Default” means any Event of Default and any event that, with the passing of time or the giving of notice or both, would become an Event of Default.

“Defaulting Lender” means any Lender (a) that is a Non-Funding Lender, (b) that has given verbal or written notice to Borrower, Administrative Agent or any Lender or has otherwise publicly announced that such Lender believes it will fail to fund all payments required to be made by it or fund all purchases of participations required to be funded by it under this Agreement and the other Loan Documents, (c) as to which Administrative Agent has a good faith belief that such Lender or an Affiliate of such Lender has defaulted in fulfilling its obligations (as a lender, agent or letter of credit issuer) under one or more other syndicated credit facilities or (d) with respect to which one or more Lender-Related Distress Events has occurred with respect to such Person or any Person that directly or indirectly controls such Lender and Administrative Agent has determined that such Lender may become a Defaulting Lender. For purposes of this definition, control of a Person shall have the same meaning as in the second sentence of the definition of Affiliate.

“Delayed Draw Commitment” shall mean, with respect to each Lender, the commitment of such Lender to make Delayed Draw Loans hereunder as set forth on Schedule 2.1(b), or in the Assignment and Acceptance pursuant to which such Lender assumed its Delayed Draw Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.5 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.2; provided that the Delayed Draw Commitment of each Lender shall be automatically increased on a dollar for dollar basis at any time by an amount equal to such Lender’s Pro Rata Share times the sum of (x) DIP Expenses Amount at such time plus; provided, that, such increase shall only be used for any costs or expenses in connection with the 363 Sale process (y) to the extent paid by the Borrower with the proceeds of such additional Delayed Draw Commitments, any interest then due and payable in respect of the Pre-Petition Obligations owing to the Pre-Petition Lenders under the Pre-Petition Credit Agreement, in arrears on the first Business Day of each month at the non-default rate of interest as set forth in the Pre-Petition Credit Agreement. The total amount of the Delayed Draw Commitments is \$20,000,000 minus the Interim Funding Amount; provided, that with the written consent of the Administrative Agent and the Lenders, without further notice and hearing or approval by the Bankruptcy Court, the Delayed Draw Commitment may be increased by an aggregate amount specified by the Administrative Agent and the Lenders in their sole discretion, which additional aggregate amount shall not exceed \$5,000,000 (which additional commitments (if any) shall be allocated among the Lenders based upon their Pro Rata Share of the Delayed Draw Commitment) and if any Lender declines to provide its Pro Rata Share of the additional commitments, the other Lenders may, at their option, agree to provide such additional commitments, in each case in an amount not to exceed their Pro Rata Share of the Delayed Draw Commitments (excluding any commitments of the Lender that has declined to provide such additional commitments).

“Delayed Draw Commitment Period” shall mean the period from and including the Closing Date to the Delayed Draw Termination Date.



“Delayed Draw Funding Date” shall have the meaning assigned to such term in Section 2.1(b).

“Delayed Draw Loans” shall have the meaning assigned to such term in Section 2.1(b).

“Delayed Draw Termination Date” shall mean the earlier to occur of (a) the date that is three days prior to the Scheduled Termination Date and (b) the Termination Date.

“DIP Expenses Amount” means the amount by which the reimbursed fees and expenses incurred by the Secured Parties and the Pre-Petition Secured Parties (including the reasonable and documented fees, costs and expenses of their respective legal, financial and other professional advisors) exceeds \$[\_\_\_\_] in the aggregate.

“DIP Facilities” means the Commitments and the provisions herein related to the Loans.

“Disclosure Documents” means, collectively, (a) all confidential information memoranda prepared in connection with the syndication of the DIP Facilities and related materials furnished by any of the Loan Parties, the Brant Parties (other than White Birch to the extent the documents have no relation to the Debtors or its subsidiaries or their respective businesses) or any of their respective Affiliates and (b) all other documents filed by any Group Member with the United States Securities and Exchange Commission.

“Disqualified Stock” means all Stock and Stock Equivalents of any Person to the extent such Stock or Stock Equivalents require such Person to purchase, redeem, retire, defease or otherwise acquire for value any of its own Stock or Stock Equivalents prior to the date that is 180 days after the Scheduled Termination Date.

“Documents” means any “documents,” as such term is defined in the UCC, now owned or hereafter acquired by any Group Member, wherever located.

“Dollars” and the sign “\$” each mean the lawful money of the United States of America.

“Domestic Person” means any “United States person” under and as defined in Section 7701(a)(30) of the Code.

“E-Fax” means any system used to receive or transmit faxes electronically.

“Electronic Transmission” means each document, instruction, authorization, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail or E-Fax, or otherwise to or from an E-System or other equivalent service.

“Eligible Accounts” has the meaning specified in Section 2.19 of the Agreement.

“Eligible Inventory” has the meaning specified in Section 2.19 of the Agreement.

“Entry Date” shall mean the date of the entry of the Final Order.

“Environmental Laws” means all Requirements of Law and Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and natural resources, including CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300(f) et seq.), all regulations promulgated under any of the foregoing, all analogous Requirements of Law and Permits and any environmental transfer of ownership notification or approval statutes, including the Industrial Site Recovery Act (N.J. Stat. Ann. §§ 13:1K-6 et seq.).

“Environmental Liabilities” means all Liabilities (including costs of Remedial Actions, natural resource damages and costs and expenses of investigation and feasibility studies) that may be imposed on, incurred by or asserted against any Group Member as a result of, or related to, any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law or otherwise, arising under any Environmental Law including those based on any Release of a Hazardous Material and resulting from the ownership, lease, sublease or other operation by any Group Member, whether on, prior or after the date hereof.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means, collectively, any Group Member, and any Person under common control, or treated as a single employer, with any Group Member, within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“ERISA Event” means any of the following: (a) a reportable event described in Section 4043(b) of ERISA (or, unless the 30-day notice requirement has been duly waived under the applicable regulations, Section 4043(c) of ERISA) with respect to a Title IV Plan, (b) the failure to meet the minimum funding standard of Sections 412 and 430 of the Code or Sections 302 and 303 of ERISA, in each case, whether or not waived, (c) a determination that any Benefit Plan is, or is expected to be, in “at risk” status (as defined in Section 430 of the Code or Section 303 of ERISA), (d) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (e) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan, (f) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA, (g) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA, (h) a determination that any Multiemployer Plan is, or is expected to be, in “critical” or “endangered” status under Section 432 of the Code or Section 305 of ERISA, (i) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (j) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due, (k) the imposition of a lien under Section 412 of the Code or Section 302 or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate, (l) the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law to qualify thereunder and (m) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV

Plan or Multiemployer Plan or for the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

“E-Signature” means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

“E-System” means any electronic system, including Intralinks<sup>®</sup> and ClearPar<sup>®</sup> and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent, any of its Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

“Eurodollar Base Rate” means, for each Interest Period, the higher of (a) the offered rate per annum for deposits of Dollars for the applicable Interest Period that appears on Reuters Screen LIBOR 01 Page as of 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period and (b) the offered rate per annum for deposits of Dollars for an Interest Period of three (3) months that appears on Reuters Screen LIBOR 01 Page as of 11:00 A.M. (London, England time) two (2) Business Days prior to the first day of the applicable Interest Period. If no such offered rate exists, such rate will be the rate of interest per annum, as determined by Administrative Agent at which deposits of Dollars in immediately available funds are offered at 11:00 A.M. (London, England time) two (2) Business Days prior to the first day in such Interest Period by major financial institutions reasonably satisfactory to Administrative Agent in the London interbank market for such Interest Period for the applicable principal amount on such date of determination.

“Eurodollar Rate” means, with respect to any Interest Period and for any Eurodollar Rate Loan, an interest rate per annum determined as the ratio of (a) the Eurodollar Base Rate with respect to such Interest Period for such Eurodollar Rate Loan to (b) the difference between the number one and the Eurodollar Reserve Requirements with respect to such Interest Period and for such Eurodollar Rate Loan; provided, however, that, in no event shall the Eurodollar Rate be less than 3.50%.

“Eurodollar Rate Loan” means any Loan that bears interest based on the Eurodollar Rate.

“Eurodollar Reserve Requirements” means, with respect to any Interest Period and for any Eurodollar Rate Loan, a rate per annum equal to the aggregate, without duplication, of the maximum rates (expressed as a decimal number) of reserve requirements in effect 2 Business Days prior to the first day of such Interest Period (including basic, supplemental, marginal and emergency reserves) under any regulations of the Federal Reserve Board or other Governmental Authority having jurisdiction with respect thereto dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “eurocurrency liabilities” in Regulation D of the Federal Reserve Board) maintained by a member bank of the United States Federal Reserve System.

“Event of Default” has the meaning specified in Section 9.1.

“Excluded Foreign Subsidiary” means any Subsidiary that is not a Domestic Person and in respect of which any of (a) the pledge of all of the Stock of such Subsidiary as

Collateral for any Obligation of the Borrower, (b) the grant by such Subsidiary of a Lien on any of its property as Collateral for any Obligation of the Borrower or (c) such Subsidiary incurring Guaranty Obligations with respect to any Obligation of Holdings, the Borrower or any Domestic Person, in each case would, in the good faith judgment of the Borrower, result in materially adverse tax consequences to the Borrower or its direct or indirect owners; provided, however, that (x) the Administrative Agent and the Borrower may agree that, despite the foregoing, any such Subsidiary shall not be an “Excluded Foreign Subsidiary” and (y) no such Subsidiary shall be an “Excluded Foreign Subsidiary” if, with substantially similar tax consequences, such Subsidiary has entered into any Guaranty Obligations with respect to, such Subsidiary has granted a security interest in any of its property to secure, or more than 66% of the Voting Stock of such Subsidiary was pledged to secure, directly or indirectly, any Indebtedness (other than the Obligations) of any Loan Party.

“Family Member” means, with respect to any Person who is a natural person, each of (a) such Person’s spouse, ancestors and descendants (whether natural or adopted), (collectively, “relatives”), or (b) the trustee, fiduciary or personal representative of such Person and any trust or investment fund solely and exclusively for the benefit of such Person and/or one or more of such Person’s relatives.

“FATCA” has the meaning specified in Section 2.17.

“Federal Funds Rate” means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as determined by the Administrative Agent in its sole discretion.

“Federal Reserve Board” means the Board of Governors of the United States Federal Reserve System and any successor thereto.

“Final Order” means a final order entered by the Bankruptcy Court in the Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures approved by the Bankruptcy Court, which order shall be substantially consistent with the Interim Order and shall otherwise be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their respective sole discretion.

“Financial Statement” means each financial statement delivered pursuant to Section 6.1.

“Fiscal Month” means any of the monthly accounting periods of Holdings.

“Fiscal Quarter” means each 3-fiscal-month period ending on March 31, June 30, September 30 or December 31.

“Fiscal Year” means the twelve-month period ending on December 31.

“GAAP” means generally accepted accounting principles in the United States of America, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. Subject to

Section 1.3, all references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the Financial Statements.

“GE Capital” has the meaning specified in the preamble hereto.

“Governmental Authority” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“Group Members” means, collectively, the Borrower, its Subsidiaries and Holdings.

“Group Members’ Accountants” means PricewaterhouseCoopers LLP or other nationally-recognized independent registered certified public accountants reasonably acceptable to the Administrative Agent.

“Guarantor” means Holdings; each Wholly Owned Subsidiary of the Borrower that is not an Excluded Foreign Subsidiary and each other Person that enters into any Guaranty Obligation with respect to any Obligation of any Loan Party.

“Guaranty and Security Agreement” means a guaranty and security agreement, in substantially the form of Exhibit H, among the Administrative Agent, the Borrower and other Guarantors from time to time party thereto.

“Guaranty Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person for any Indebtedness, lease, dividend or other obligation (the “primary obligation”) of another Person (the “primary obligor”), if the purpose or intent of such Person in incurring such liability, or the economic effect thereof, is to guarantee such primary obligation or provide support, assurance or comfort to the holder of such primary obligation or to protect or indemnify such holder against loss with respect to such primary obligation, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of any primary obligation, (b) the incurrence of reimbursement obligations with respect to any letter of credit or bank guarantee in support of any primary obligation, (c) the existence of any Lien, or any right, contingent or otherwise, to receive a Lien, on the property of such Person securing any part of any primary obligation and (d) any liability of such Person for a primary obligation through any Contractual Obligation (contingent or otherwise) or other arrangement (i) to purchase, repurchase or otherwise acquire such primary obligation or any security therefor or to provide funds for the payment or discharge of such primary obligation (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency, working capital, equity capital or any balance sheet item, level of income or cash flow, liquidity or financial condition of any primary obligor, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party to any Contractual Obligation, (iv) to purchase, sell or lease (as lessor or lessee) any property, or to purchase or sell services, primarily for the purpose of enabling the primary obligor to satisfy such primary obligation or to protect the holder of such primary obligation against loss or (v) to supply funds to

or in any other manner invest in, such primary obligor (including to pay for property or services irrespective of whether such property is received or such services are rendered); provided, however, that “Guaranty Obligations” shall not include (x) endorsements for collection or deposit in the ordinary course of business and (y) product warranties given in the ordinary course of business. The outstanding amount of any Guaranty Obligation shall equal the outstanding amount of the primary obligation so guaranteed or otherwise supported or, if lower, the stated maximum amount for which such Person may be liable under such Guaranty Obligation.

“Hazardous Material” means any substance, material or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including petroleum or any fraction thereof, asbestos, polychlorinated biphenyls and radioactive substances.

“Hedging Agreement” means any Interest Rate Contract, foreign exchange, swap, option or forward contract, spot, cap, floor or collar transaction, any other derivative instrument and any other similar speculative transaction and any other similar agreement or arrangement designed to alter the risks of any Person arising from fluctuations in any underlying variable.

“Holdings” has the meaning specified in the preamble hereto.

“Impacted Lender” means any Lender that fails promptly to provide Administrative Agent, upon Administrative Agent’s request, satisfactory assurance that such Lender will not become a Defaulting Lender.

“Indebtedness” of any Person means, without duplication, any of the following, whether or not matured: (a) all indebtedness for borrowed money, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all reimbursement obligations (including, for the avoidance of doubt, any and all contingent reimbursement obligations) with respect to (i) letters of credit, bank guarantees or bankers’ acceptances or (ii) surety, customs, reclamation or performance bonds (in each case not related to judgments or litigation) other than those entered into in the ordinary course of business, (d) all obligations to pay the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business, (e) all obligations created or arising under any conditional sale or other title retention agreement with respect to Property acquired by such Person, regardless of whether the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property, (f) all Capitalized Lease Obligations, (g) all Disqualified Stock of such Person, valued at, in the case of redeemable preferred Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends, (h) all payments that would be required to be made in respect of any Hedging Agreement in the event of a termination (including an early termination) on the date of determination and (i) all Guaranty Obligations for obligations of any other Person constituting Indebtedness of such other Person; provided, however, that the items in each of clauses (a) through (i) above shall constitute “Indebtedness” of such Person solely to the extent, directly or indirectly, (x) such Person is liable for any part of any such item, (y) any such item is secured by a Lien on such Person’s property or (z) any other Person has a right, contingent or otherwise, to cause such Person to become liable for any part of any such item or to grant such a Lien.

“Indemnified Matter” has the meaning specified in Section 11.4.

“Indemnitee” has the meaning specified in Section 11.4.

“Initial Budget” means the initial four-week cash flow budget, substantially in the form of Exhibit D, or any other form approved by the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, setting forth, on a line-item basis, for the four-week period commencing on December [\_\_\_], 2011, (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses under the Cases, capital expenditures and fees and expenses of the Administrative Agent and the Pre-Petition Agent (including counsel, financial advisors and other professionals therefor) and the other Secured Parties and Pre-Petition Secured Parties and any other fees and expenses relating to the DIP Facilities) and (iii) unrestricted cash on hand[; provided, that the disbursements for the first week period of the Initial Budget shall not exceed the cash collateral budget for the corresponding period approved by the Bankruptcy Court prior to the Closing Date.]

“Initial Deadline” means January 18, 2012, or such later date to which the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their respective sole discretion.

“Intellectual Property” means all rights, title and interests in or relating to intellectual property and industrial property arising under any Requirement of Law and all IP Ancillary Rights relating thereto, including all Copyrights, Patents, Trademarks, Internet Domain Names, Trade Secrets and IP Licenses.

“Interest Period” means, with respect to any Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is made or converted to a Eurodollar Rate Loan or, if such Loan is continued, on the last day of the immediately preceding Interest Period therefor and, in each case, ending 1 month thereafter; provided, however, that (a) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless the result of such extension would be to extend such Interest Period into another such Business Day falls in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month, (c) no Interest Period may end after (x) with respect to Interim Date Loans, the Entry Date and (y) with respect to Delayed Draw Loans, the Scheduled Termination Date, (d) no Interest Period shall be in respect of Loans having an aggregate principal amount of less than \$[1,000,000], and (e) there shall be outstanding at any one time no more than 6 Interest Periods.

“Interest Rate Contracts” means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

“Interim Date Loan Commitment” shall mean, with respect to each Lender, the commitment of such Lender to make Interim Date Loans hereunder as set forth on Schedule 2.1(a), or in the Assignment and Acceptance pursuant to which such Lender assumed its Interim Date Loan Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.5 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.2. The total amount of the Interim Date Loan Commitments is \$12,000,000.

“Interim Date Loan Termination Date” shall mean the earlier to occur of (i) the date the Interim Date Loan Commitments are permanently reduced to zero pursuant to Section 2.1 and (ii) the Entry Date.

“Interim Date Loans” shall have the meaning assigned to such term in Section 2.1(a).

“Interim Funding Amount” shall mean the lesser of (a) \$12,000,000 and (b) the maximum amount approved by the Bankruptcy Court in the Interim Order to be made available to the Borrower prior to the Entry Date.

“Interim Order” means an interim order entered by the Bankruptcy Court in the Cases after an interim hearing and pursuant to the standards prescribed in section 364 of the Bankruptcy Code, Bankruptcy Rule 4001 and other applicable law in the form attached hereto as Exhibit E or otherwise in form and substance satisfactory to the Administrative Agent and the Required Lenders in their respective sole discretion.

“Internet Domain Names” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to Internet domain names.

“Investment” means, with respect to any Person, directly or indirectly, (a) to own, purchase or otherwise acquire, in each case whether beneficially or otherwise, any investment in, including any interest in, any Security of any other Person (other than any evidence of any Obligation), (b) to purchase or otherwise acquire, whether in one transaction or in a series of transactions, all or a significant part of the property of any other Person or a business conducted by any other Person or all or substantially all of the assets constituting the business of a division, branch, brand or other unit operation of any other Person, (c) to incur, or to remain liable under, any Guaranty Obligation for Indebtedness of any other Person, to assume the Indebtedness of any other Person or to make, hold, purchase or otherwise acquire, in each case directly or indirectly, any deposit, loan, advance, commitment to lend or advance, or other extension of credit (including by deferring or extending the date of, in each case outside the ordinary course of business, the payment of the purchase price for Sales of property or services to any other Person, to the extent such payment obligation constitutes Indebtedness of such other Person), excluding deposits with financial institutions available for withdrawal on demand, deposits, prepaid expenses, accounts receivable and similar items created in the ordinary course of business, (d) to make, directly or indirectly, any contribution to the capital of any other Person or (e) to Sell any property for less than fair market value (including a disposition of cash or Cash Equivalents in exchange for consideration of lesser value); provided, however, that such Investment shall be valued at the difference between the value of the consideration for such Sale and the fair market value of the property Sold.

“IP Ancillary Rights” means, with respect to any other Intellectual Property, as applicable, all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property and all income, royalties, proceeds and Liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect to such Intellectual Property, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right.



“IP License” means all Contractual Obligations (and all related IP Ancillary Rights), whether written or oral, granting any right title and interest in or relating to any Intellectual Property.

“IRS” means the Internal Revenue Service of the United States and any successor thereto.

“Lender” means, collectively, the financial institutions or other Persons that (a) are listed on the signature pages hereof as a “Lender” or (b) from time to time become a party hereto by execution of an Assignment, in each case together with their successors.

“Lender-Related Distress Event” means, with respect to any Lender or any Person that directly or indirectly controls such Lender (each a “Distressed Person”), for so long as such condition exists, (a) a voluntary or involuntary case with respect to such Distressed Person under the Bankruptcy Code or any similar bankruptcy laws of its jurisdiction of formation, (b) a custodian, conservator, receiver or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, (c) such Distressed Person is subject to a forced liquidation, merger, sale or other change of majority control supported in whole or in part by guaranties or other support (including the nationalization or assumption of majority ownership or operating control by) the U.S. government or other Governmental Authority, or (d) such Distressed Person makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt. For purposes of this definition, control of a Person shall have the same meaning as in the second sentence of the definition of Affiliate.

“Liabilities” means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“Loan” means any Interim Date Loan or Delayed Draw Loan made by any Lender hereunder.

“Loan Documents” means, collectively, this Agreement, any Notes, the Guaranty and Security Agreement, the Control Agreements and, when executed, each Borrowing Base Certificate and each other document executed by a Loan Party and delivered to the Administrative Agent or any Lender in connection with or pursuant to any of the foregoing or the Obligations, together with any modification of any term, or any waiver with respect to, any of the foregoing.

“Loan Party” means the Borrower and each Guarantor.

“Material Adverse Effect” means an effect that results in or causes, or could reasonably be expected to result in or cause, a material adverse change in any of (a) the condition (financial or otherwise), business, performance, operations or property of the Group Members, taken as a whole, (b) the ability of the Borrower or the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents and (c) the validity or enforceability of any Loan Document or the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under any Loan Document; provided, however, that the filing of the Cases and the consequences that customarily result from reorganization under Chapter 11 of the Bankruptcy Code shall not be considered in determining whether there has been a “Material Adverse Effect.”

“Material Environmental Liabilities” means Environmental Liabilities exceeding \$500,000 in the aggregate.

“Material Post-Petition Contract” means any contractual obligation to which the Borrower or any of Group Member is a party (other than the Loan Documents) that was entered into or became effective after the Petition Date for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

“Maximum Lawful Rate” has the meaning specified in Section 2.9(d).

“Milestone” has the meaning specified in Section 7.13.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means any multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

“Net Cash Proceeds” means proceeds received in cash from (a) any Sale of, or Property Loss Event with respect to, property, net of any amount required to be paid or prepaid on Indebtedness (other than the Obligations and Indebtedness owing to any Group Member) that is secured by a Lien on the property subject thereto to the extent such Lien is a Pre-Petition Permitted Senior Encumbrance or (b) any sale or issuance of Stock or incurrence of Indebtedness; provided, however, that any such proceeds received by any Subsidiary of the Borrower that is not a Wholly Owned Subsidiary of the Borrower shall constitute “Net Cash Proceeds” only to the extent of the aggregate direct and indirect beneficial ownership interest of the Borrower therein.

“Newberg Oregon Mill” means the Borrower’s Mill in Newberg, Oregon.

“Non-Funding Lender” has the meaning specified in Section 2.2(c).

“Non-U.S. Lender Party” means each of the Administrative Agent, each Lender, each SPV and each participant, in each case that is not a Domestic Person.

“Note” means a promissory note of the Borrower, in substantially the form of Exhibit B, payable to the order of a Lender in a principal amount equal to the amount of such Lender’s Commitment.

“Notice of Borrowing” has the meaning specified in Section 2.2.

“Notice of Conversion or Continuation” has the meaning specified in Section 2.10.

“Obligations” means, with respect to any Loan Party, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Loan Party to the Administrative Agent, any Lender, any other Indemnitee, any participant or any SPV arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (a) if such Loan Party is the Borrower, all Loans, (b) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (c) all other fees, expenses (including fees, costs and expenses of counsel and financial advisory and other professional fees), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Loan Party under any Loan Document.

“Other Taxes” has the meaning specified in Section 2.17(c).

“Participant Register” has the meaning specified in Section 11.2(f).

“Patents” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to letters patent and applications therefor.

“PBGC” means the United States Pension Benefit Guaranty Corporation and any successor thereto.

“Petition Date” has the meaning specified in the recitals hereto.

“Permit” means, with respect to any Person, any permit, approval, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other Contractual Obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Permitted Indebtedness” means any Indebtedness of any Group Member that is not prohibited by Section 8.1 or any other provision of any Loan Document.

“Permitted Investment” means any Investment of any Group Member that is not prohibited by Section 8.3 or any other provision of any Loan Document.

“Permitted Lien” means any Lien on or with respect to the property of any Group Member that is not prohibited by Section 8.2 or any other provision of any Loan Document.

“Person” means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

“Pre-Petition Agent” has the meaning specified in the recitals hereto.

“Pre-Petition Collateral” means the “Collateral” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition Credit Agreement” has the meaning specified in the recitals hereto.

“Pre-Petition Credit Obligations” means collectively, all “Obligations” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition First Priority Liens” means the Liens granted to the Pre-Petition Agent, for the benefit of itself and the other Pre-Petition Secured Parties, to secure the Pre-Petition Credit Obligations.

“Pre-Petition Lenders” has the meaning specified in the recitals hereto.

“Pre-Petition Loan Documents” means, collectively, the “Loan Documents” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition Required Lenders” means, collectively, the “Required Lenders” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition Secured Parties” means, collectively, the “Secured Parties” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition Senior Permitted Encumbrances” means any valid, prior, perfected and non-avoidable security interest in existence as of the Petition Date and permitted under the Pre-Petition Loan Documents, after giving effect to any applicable subordination or intercreditor agreement, only to the extent such security interest is senior to the Pre-Petition First Priority Liens.

“Professional Escrow Accounts” means, collectively, the segregated escrow accounts of the Administrative Agent set aside for the purposes provided for in Section 2.12(c).

“Professional Fees” means, collectively, the Debtors’ Professional Fees and the Committee Professional Fees.

“Projections” means, collectively, the Initial Projections and any document delivered pursuant to Section 6.1(h).

“Property Loss Event” means, with respect to any property, any loss of or damage to such property or any taking of such property or condemnation thereof.

“Pro Rata Outstandings”, of any Lender at any time, means the outstanding principal amount of the Loans owing to such Lender.

“Pro Rata Share” means, with respect to any Lender at any time, the percentage obtained by dividing (a) the sum of the Commitments (or, if such Commitments are terminated, the Pro Rata Outstandings therein) of such Lender then in effect by (b) the sum of the Commitments (or, if such Commitments are terminated, the Pro Rata Outstandings therein) of all Lenders then in effect; provided, however, that, if there are no Commitments and no Pro Rata Outstandings, such Lender’s Pro Rata Share shall be determined based on the Pro Rata Share in such DIP Facilities

most recently in effect, after giving effect to any subsequent assignment and any subsequent non-pro rata payments of any Lender pursuant to Section 2.18.

“Proposed Budget” has the meaning specified in Section 6.1(d).

“Purchaser” means a purchaser under the 363 Asset Purchase Agreement.

“Real Estate” has the meaning specified in Section 4.16(b).

“Register” has the meaning specified in Section 2.14(b).

“Related Person” means, with respect to any Person, each Affiliate of such Person and each shareholder, member, principal, subsidiary, director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor (including those retained in connection with the satisfaction or attempted satisfaction of any condition set forth in Article III) and other consultants and agents of or to such Person or any of its Affiliates, together with, if such Person is the Administrative Agent, each other Person or individual designated, nominated or otherwise mandated by or helping the Administrative Agent, or to which the Administrative Agent has otherwise delegated duties, pursuant to and in accordance with Section 10.4 or any comparable provision of any Loan Document.

“Release” means any release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material into or through the environment.

“Released Parties” has the meaning specified in Section 11.22.

“Releasing Parties” has the meaning specified in Section 11.22.

“Remedial Action” means all actions required under any Environmental Law to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release of Hazardous Materials or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

“Required Lenders” means, at any time, Lenders having at such time in excess of 66 2/3% of the aggregate Commitments (or, if such Commitments are terminated, the Pro Rata Outstandings) then in effect, with each such calculation being done separately and ignoring, in each such calculation, the amounts held by any Non-Funding Lender.

“Requirements of Law” means, with respect to any Person, collectively, the common law and all federal, state, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities) and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of, any Governmental Authority, in each case whether or not having the force of law and that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” means, with respect to any Person, any of the president, chief executive officer, treasurer, assistant treasurer, controller, managing member or general partner of such Person but, in any event, with respect to financial matters, any such officer that is responsible for preparing the Financial Statements delivered hereunder and, with respect to the Corporate Chart and other documents delivered pursuant to Section 6.1(g), documents delivered on the Closing Date and documents delivered pursuant to Section 7.10, the secretary or assistant secretary of such Person or any other officer responsible for maintaining the corporate and similar records of such Person.

“Restricted Payment” means (a) any dividend, return of capital, distribution or any other payment or Sale of property (other than Sales (i) in the ordinary course of business and (ii) of obsolete and worn-out assets), whether direct or indirect (including through the use of Hedging Agreements, the making, repayment, cancellation or forgiveness of Indebtedness and similar Contractual Obligations) and whether in cash, Securities or other property, on account of any Stock or Stock Equivalent of the Borrower or any of its Subsidiaries, in each case now or hereafter outstanding, including with respect to a claim for rescission of a Sale of such Stock or Stock Equivalent and (b) any redemption, retirement, termination, defeasance, cancellation, purchase or other acquisition for value, whether direct or indirect (including through the use of Hedging Agreements, the making, repayment, cancellation or forgiveness of Indebtedness and similar Contractual Obligations), of any Stock or Stock Equivalent of any Group Member or of any direct or indirect parent entity of the Borrower, now or hereafter outstanding, and any payment or other transfer setting aside funds for any such redemption, retirement, termination, cancellation, purchase or other acquisition, whether directly or indirectly and whether to a sinking fund, a similar fund or otherwise.

“S&P” means Standard & Poor’s Rating Services.

“Sale and Leaseback Transaction” means, with respect to any Person (the “obligor”), any Contractual Obligation or other arrangement with any other Person (the “counterparty”) consisting of a lease by such obligor of any property that, directly or indirectly, has been or is to be Sold by the obligor to such counterparty or to any other Person to whom funds have been advanced by such counterparty based on a Lien on, or an assignment of, such property or any obligations of such obligor under such lease.

“Sale Order” means the order entered by the Bankruptcy Court in form and substance satisfactory to the Purchaser, the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders in their respective sole discretion, among other things, approving the 363 Sale, the results of the Auction and the Winning Bidder’s bid received at the Auction.

“Sale Procedures Motion” means a motion seeking entry of the Sales Procedures Order, which motion shall be in form and substance reasonably satisfactory to the Administrative Agent, the Pre-Petition Agent, the Required Lenders and the Pre-Petition Required Lenders.

“Sale Procedures Order” means an order approving (a) the Bidding Procedures to be applicable to the 363 Sale and (b) subject to higher and better bids, the 363 Asset Purchase Agreement, or such other asset purchase agreement with a third-party purchaser, which other asset purchase agreement and which third party purchaser shall be acceptable to the Secured Parties in their sole discretion.

“Scheduled Termination Date” means the date that is 180 days following the Closing Date.

“Secured Parties” means the Lenders, the Administrative Agent, each other Indemnitee and any other holder of any Obligation of any Loan Party.

“Security” means all Stock, Stock Equivalents, voting trust certificates, bonds, debentures, instruments and other evidence of Indebtedness, whether or not secured, convertible or subordinated, all certificates of interest, share or participation in, all certificates for the acquisition of, and all warrants, options and other rights to acquire, any Security.

“Sell” means, with respect to any property, to sell, convey, transfer, assign, license, lease or otherwise dispose of, any interest therein or to permit any Person to acquire any such interest, including, in each case, through a Sale and Leaseback Transaction or through a sale, factoring at maturity, collection of or other disposal, with or without recourse, of any notes or accounts receivable. Conjugated forms thereof and the noun “Sale” have correlative meanings.

“SPV” means any special purpose funding vehicle identified as such in a writing by any Lender to the Administrative Agent.

“Stated Rate” has the meaning specified in Section 2.9(d).

“Stock” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

“Stock Equivalents” means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

“Subordinated Debt” means any Indebtedness that is subordinated to the payment in full of the Obligations on terms and conditions satisfactory to the Administrative Agent in its sole discretion.

“Subsidiary” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than 50% of the outstanding Voting Stock is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person.

“Substitute Lender” has the meaning specified in Section 2.18(a).

“Tax Affiliate” means, (a) the Borrower and its Subsidiaries and (b) if the Borrower becomes a corporation for U.S. federal, state or local income tax purposes, any Affiliate of the Borrower with which the Borrower or its Subsidiaries files or is eligible to file consolidated, combined or unitary tax returns, but only if and to the extent that the Borrower or its Subsidiaries may be liable for the tax in question of such Affiliate pursuant to Treasury Regulation Section 1.1502-6 (or similar provision of state or local law).

“Tax Return” has the meaning specified in Section 4.8.

“Taxes” has the meaning specified in Section 2.17(a).

“Third Party Asset Purchase Agreement” shall mean such other asset purchase agreement with a third-party that provides for the assumption, assignment, or payment of the claims set forth in clauses (w), (x), (y) and (z) in the definition of 363 Sale Asset Purchase Agreement and which asset purchase agreement is in form and substance satisfactory to the Administrative Agent, the Pre-Petition Agent, the Required Lenders and the Pre-Petition Required Lenders in their sole discretion.

“Threshold Amount” has the meaning specified in Section 9.1(d).

“Termination Date” means the earliest to occur of (a) the Scheduled Termination Date, (b) the effective date of any plan of reorganization for the Debtors, (c) the occurrence of any Termination Declaration Date, (d) the date on which the 363 Sale is consummated and (e) the date on which the Obligations shall have been indefeasibly repaid (or in the case of contingent Obligations, indefeasibly cash collateralized in accordance with the terms hereof) and all Commitments hereunder and under the Loan Documents shall have been irrevocably terminated.

“Termination Declaration” has the meaning specified in Section 9.2.

“Termination Declaration Date” has the meaning specified in Section 9.2.

“Test Period” has the meaning specified in Section 5.1(d).

“Title IV Plan” means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, maintained by any ERISA Affiliate or to which any ERISA Affiliate has any contribution obligation or liability.

“Trade Secrets” means all right, title and interest (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trade secrets.

“Trademarks” means all rights, title and interests (and all related IP Ancillary Rights) arising under any Requirement of Law in or relating to trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and, in each case, all goodwill associated therewith, all registrations and recordations thereof and all applications in connection therewith.

“UCC” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect in the State of New York.

“United States” means the United States of America.

“Unused Commitment Fee” has the meaning specified in Section 2.11.

“U.S. Lender Party” means each of the Administrative Agent, each Lender, each SPV and each participant, in each case that is a Domestic Person.



“Variance Report” means a variance report certified by the Chief Restructuring Officer, substantially in the form delivered to the Pre-Petition Lenders prior to the Closing Date, certifying (i) the actual cash receipts, expenditures and disbursements for such immediately preceding calendar week on a line-item basis, (ii) the cumulative variance in dollar amounts of the actual expenditures and disbursements (excluding debt service, professional fees and Capital Expenditures) for the then applicable Test Period from those reflected for the corresponding Test Period in the Budget, (iii) that the Borrower is in compliance with the covenants set forth in Section 5.1 with respect to the then applicable Test Period (with calculations demonstrating such compliance) and (iv) that no Default or Event of Default is continuing as of the date of delivery of such Variance Report.

“Voting Stock” means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or other controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the occurrence of any contingency).

“Weekly Cash Flow Projection” means, as of any weekly period, a statement of sources and uses of cash of the Debtors for the 13 weeks including the week during which a Weekly Cash Flow Projection is delivered to the Administrative Agent in form and with detail substantially similar to the Weekly Cash Flow Projection delivered to the Administrative Agent on the Petition Date, which shall reflect the Borrower’s good faith projection of all cash receipts and disbursements in connection with the operation of its business for such 13-week period.

“White Birch” means, collectively, White Birch Paper Company and its affiliates (other than the Loan Parties).

“Wholly Owned Subsidiary” of any Person means any Subsidiary of such Person, all of the Stock of which (other than nominal holdings and director’s qualifying shares) is owned by such Person, either directly or through one or more Wholly Owned Subsidiaries of such Person.

“Winning Bidder” means the bidder that (a) purchases, at the Auction, all or substantially all of the assets of the Debtors pursuant to the Alternate 363 Asset Purchase Agreement and (b) is acceptable to the Administrative Agent and the Required Lenders, in each case in their respective sole discretion.

“Withdrawal Liability” means, at any time, any liability incurred (whether or not assessed) by any ERISA Affiliate and not yet satisfied or paid in full at such time with respect to any Multiemployer Plan pursuant to Section 4201 of ERISA.

Section 1.2 UCC Terms. The following terms have the meanings given to them in the applicable UCC: “commodity account”, “commodity contract”, “commodity intermediary”, “deposit account”, “entitlement holder”, “entitlement order”, “property, plant and equipment”, “financial asset”, “general intangible”, “goods”, “instruments”, “inventory”, “securities account”, “securities intermediary” and “security entitlement”.

Section 1.3 Accounting Terms and Principles. GAAP. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any Financial Statement hereafter adopted by Holdings shall be given effect if such change would affect a calculation that measures compliance with any provision of Article V or VIII

unless the Borrower, the Administrative Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all Financial Statements and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP.

Section 1.4 Payments. The Administrative Agent may set up standards and procedures to determine or redetermine the equivalent in Dollars of any amount expressed in any currency other than Dollars and otherwise may, but shall not be obligated to, rely on any determination made by any Loan Party. Any such determination or redetermination by the Administrative Agent shall be conclusive and binding for all purposes, absent manifest error. No determination or redetermination by any Secured Party or Loan Party and no other currency conversion shall change or release any obligation of any Loan Party or of any Secured Party (other than the Administrative Agent and its Related Persons) under any Loan Document, each of which agrees to pay separately for any shortfall remaining after any conversion and payment of the amount as converted. The Administrative Agent may round up or down, and may set up appropriate mechanisms to round up or down, any amount hereunder to nearest higher or lower amounts and may determine reasonable de minimis payment thresholds.

Section 1.5 Interpretation. (a) Certain Terms. Except as set forth in any Loan Document, all accounting terms not specifically defined herein shall be construed in accordance with GAAP (except for the term “property, plant and equipment”, which shall be interpreted as broadly as possible, including, in any case, cash, Securities, other assets, rights under Contractual Obligations and Permits and any right or interest in any property). The terms “herein”, “hereof” and similar terms refer to this Agreement as a whole. In the computation of periods of time from a specified date to a later specified date in any Loan Document, the term “from” means “from and including” and the words “to” and “until” each mean “to but excluding” and the word “through” means “to and including.” In any other case, the term “including” when used in any Loan Document means “including without limitation.” The term “documents” means all writings, however evidenced and whether in physical or electronic form, including all documents, instruments, agreements, notices, demands, certificates, forms, financial statements, opinions and reports. The term “incur” means incur, create, make, issue, assume or otherwise become directly or indirectly liable in respect of or responsible for, in each case whether directly or indirectly, and the terms “incurrence” and “incurred” and similar derivatives shall have correlative meanings.

(b) Certain References. Unless otherwise expressly indicated, references (i) in this Agreement to an Exhibit, Schedule, Article, Section or clause refer to the appropriate Exhibit or Schedule to, or Article, Section or clause in, this Agreement and (ii) in any Loan Document, to (A) any agreement shall include all exhibits, schedules, appendixes and annexes to such agreement and, unless the prior consent of any Secured Party required therefor is not obtained, any modification to any term of such agreement, (B) any statute shall be to such statute as modified from time to time and to any successor legislation thereto, in each case as in effect at the time any such reference is operative and (C) any time of day shall be a reference to New York time. Titles of articles, sections, clauses, exhibits, schedules and annexes contained in any Loan Document are without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. Unless otherwise expressly indicated, the meaning of any term defined (including by reference) in any Loan Document shall be equally applicable to both the singular and plural forms of such term.

(c) Business Days. If any action required to be taken hereunder is required to be taken on a day that is not a Business Day, then such action shall not be required to be taken on such day, but instead shall be required to be taken on the immediately succeeding Business Day.

(d) Consent of Required Lenders. Any action, extension, waiver or other provision in this Agreement that requires the consent of the Required Lenders (including any action, extension, waiver or other provision that required the consent of the Required Lenders and other Lenders or parties hereunder) shall be effective only upon receipt of the consent of the Pre-Petition Required Lenders in addition to any other consent expressly required hereunder.

## ARTICLE II THE FACILITIES

### Section 2.1      The Commitments.

(a) Interim Date Loan Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make a loan to the Borrower on the immediately succeeding Business Day after the date on which the Interim Order is issued by the Bankruptcy Court in a principal amount equal to its Interim Date Loan Commitment (such loans, individually, an “Interim Date Loan” and, collectively, the “Interim Date Loans”). Each Lender’s Interim Date Loan Commitment shall (i) reduce to zero immediately after the making of its Interim Date Loan pursuant to this Section 2.1(a) and (ii) terminate immediately and without further action on the Interim Date Loan Termination Date. Once funded, each Interim Date Loan shall be a “Loan” for all purposes under this Agreement and the other Loan Documents. Amounts paid or prepaid in respect of Interim Date Loans may not be reborrowed.

(b) Delayed Draw Loan Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, during the Delayed Draw Commitment Period, to make loans to the Borrower in an aggregate principal amount not to exceed its Delayed Draw Commitment (such loans, individually, a “Delayed Draw Loan” and, collectively, the “Delayed Draw Loans”). Each Lender’s Delayed Draw Commitment shall (i) reduce on a dollar-for-dollar basis immediately following any and each making of a Delayed Draw Loan by it pursuant to this Section 2.1(b) by the principal amount of such Delayed Draw Loan and (ii) terminate immediately and without further action on the Delayed Draw Termination Date. Subject to the terms and conditions set forth herein, the Borrower may make borrowings under the Lenders’ collective Delayed Draw Commitments during the Delayed Draw Commitment Period (the date of any such borrowing, a “Delayed Draw Funding Date”) in an aggregate principal amount, when combined with the aggregate principal amount of all Interim Date Loans made pursuant to Section 2.1(a), not to exceed the aggregate principal amount of the Commitments. Each Delayed Draw Loan shall be made in a minimum amount of \$[1.0 million] and increments of \$[1.0 million] in excess thereof. Once funded, each Delayed Draw Loan shall be a “Loan” for all purposes under this Agreement and the other Loan Documents. (Notwithstanding the foregoing, prior to the Entry Date of the Final Order, the aggregate principal amount of Loans outstanding at any time shall not exceed the Interim Funding Amount, and no Loans shall be made in excess thereof.) Amounts paid or prepaid in respect of Loans may not be reborrowed.

(c) All proceeds of the Interim Date Loans and the Delayed Draw Loans shall be wired directly to a Controlled Deposit Account upon receipt thereof by the Administrative Agent, and the Administrative Agent shall thereupon either deem such account to be the Cash

Collateral Account or immediately transfer such funds into the Cash Collateral Account. Amounts will be disbursed from the Controlled Deposit Account from time to time by the Administrative Agent, as set forth in Section 2.2(d), solely to fund the Cases and the business of the Debtors, subject to and in accordance with the Budget (subject to any variance permitted by Section 5.1(a)), the Interim Order and the Final Order, as applicable. The Controlled Deposit Account will be set up with “zero-balance-account” functionality to effectuate transfers between Debtors’ existing operating accounts, make other wire transfers and process checks in the ordinary course of business and to receive draws and other funding under the DIP Facilities. The Borrower shall only be permitted to withdraw funds from the Controlled Deposit Account to make payments in accordance with the Budget, Interim Order and the Final Order and use the proceeds as described therein so long as no Event of Default has occurred and is continuing.

Section 2.2 Borrowing Procedures; Disbursement Procedures. (a) Notice From the Borrower. Each Borrowing shall be made on notice given by the Borrower to the Administrative Agent not later than 12:00 noon at least 5 Business Days prior to the date of the proposed Borrowing; provided, that notice for the Borrowing of the Initial Date Loan may be delivered no later than 5:00 p.m. on the date on which the Interim Order is issued by the Bankruptcy Court. Each such notice may be made in a writing substantially in the form of Exhibit C (a “Notice of Borrowing”) duly completed or by telephone if confirmed promptly, but in any event within one Business Day, and shall set forth in reasonable detail the planned disbursements to be made with the proceeds of such Borrowing in accordance with the Budget as certified by a Responsible Officer of the Borrower. Loans shall be made as Base Rate Loans unless, outside of a suspension period pursuant to Section 2.15, the Notice of Borrowing specifies that all or a portion thereof shall be Eurodollar Rate Loans.

(b) Notice to Each Lender. The Administrative Agent shall give to each Lender prompt notice of the Administrative Agent’s receipt of a Notice of Borrowing and, if Eurodollar Rate Loans are properly requested in such Notice of Borrowing, prompt notice of the applicable interest rate. Each Lender shall, before 2:00 p.m. on the date of the proposed Borrowing, make available to the Administrative Agent at its address referred to in Section 11.11, such Lender’s Pro Rata Share of such proposed Borrowing. Upon fulfillment or due waiver (i) on the Closing Date, of the applicable conditions set forth in Section 3.1 and (ii) on the Closing Date and any time thereafter, of the applicable conditions set forth in Section 3.2 the Administrative Agent shall make such funds available to the Borrower on the date set forth in the relevant Notice of Borrowing, so long as such date is in compliance herewith.

(c) Non-Funding Lenders. Unless the Administrative Agent shall have received notice from any Lender prior to the date such Lender is required to make any payment hereunder with respect to any Loan that such Lender will not make such payment (or any portion thereof) available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such payment available to the Administrative Agent on the date such payment is required to be made in accordance with this Article II and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. The Borrower agrees to repay to the Administrative Agent on demand such amount (until repaid by such Lender) with interest thereon for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at the interest rate applicable to the Obligation that would have been created when the Administrative Agent made available such amount to the Borrower had such Lender made a corresponding payment available; provided, however, that such payment shall not relieve such Lender of any

obligation it may have to the Borrower hereunder. In addition, any Lender that shall not have made available to the Administrative Agent any portion of any payment described above (any such Lender, a “Non-Funding Lender”) agrees to pay such amount to the Administrative Agent on demand together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at the Federal Funds Rate for the first Business Day and thereafter in the case of a payment in respect of a Loan or otherwise, at the interest rate applicable at the time to Base Rate Loans hereunder. Such repayment shall then constitute the funding of the corresponding Loan. The existence of any Non-Funding Lender shall not relieve any other Lender of its obligations under any Loan Document, but no other Lender shall be responsible for the failure of any Non-Funding Lender to make any payment required under any Loan Document.

(d) Cash Collateral Account; Disbursements from the Cash Collateral Account; Agent Escrow Account. So long as no Default or Event of Default is continuing hereunder and no default is continuing under the Interim Order or the Final Order, amounts in the Cash Collateral Account shall be disbursed at the request of the Borrower solely to make payments when due and payable in accordance with the Budget, the Interim Order and the Final Order;; provided, that, such amounts shall not be disbursed unless: (i) a Responsible Officer of the Borrower and, the Chief Restructuring Officer, shall have executed and delivered a certificate to the Administrative Agent prior to, or at the time of, such disbursement detailing that such disbursement is being made in accordance with the Budget, (ii) no Default or Event of Default has occurred and is continuing, (iii) the representations and warranties set forth in each Loan Document shall be true and correct, in all material respects on and as of such date or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date, except for such changes as are expressly permitted by the terms of this Agreement and (iv) such disbursements are for products or services specified in the Budget and otherwise permitted hereunder. During the continuance of any Default or Event of Default hereunder or during the continuance of any default under the Interim Order or the Final Order, amounts in the Cash Collateral Account shall only be disbursed as directed by the Administrative Agent by 2:00 p.m, on the Business Day of any request therefor by the Borrower to make payments when due and payable in accordance with the Budget, the Interim Order and the Final Order; provided that such amounts shall not be disbursed and the Administrative Agent shall not be obligated to so direct such disbursement unless a Responsible Officer of the Borrower and, the Chief Restructuring Officer, shall have executed and delivered a certificate to the Administrative Agent prior to, or at the time of, such disbursement detailing that such disbursement is being made in accordance with the Budget. If, at any time after the Closing Date, the aggregate balances held in the Cash Collateral Account and the Controlled Deposit Accounts, in each case measured on a cash basis, together with the value of any securities entitlements credited to any Controlled Securities Accounts exceeds \$5,000,000, all amounts deposited (and any securities entitlements) in such accounts in excess of \$5,000,000 in the aggregate shall be transferred to the Agent Escrow Account (and if any portion of such amounts consists of securities entitlements credited to any Controlled Securities Account, such securities shall be sold or disposed of for cash and the cash proceeds of such sale shall be deposited in the Agent Escrow Account). On any Business Day prior to the Termination Date, upon request of the Debtors and so long as no Default or Event of Default is then continuing hereunder or under the Interim Order, the Administrative Agent shall release any funds in the Agent Escrow Account to the Cash Collateral Account within one Business Day from such request of the Debtors in such amounts as may be necessary to make disbursements permitted under this Section 2.2(d). Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may apply all amounts on deposit in the Cash Collateral Account and the

Agent Escrow Account against the Obligations of the Borrower that are then due and payable to the Agents, the Lenders and the other Secured Parties, in the order of application provided for in Section 2.12 hereof and as otherwise provided in this Agreement. Notwithstanding the foregoing, amounts shall be released from the Cash Collateral Account to fund the expenses incurred in accordance with the Budget set forth in the Carve-Out (in an amount up to the Carve-Out Cap and subject to the limitations set forth herein and in the Interim Order).

Section 2.3 [Reserved].

Section 2.4 [Reserved].

Section 2.5 Reduction and Termination of the Commitments.

(a) Optional. The Borrower may, upon five (5) Business Days prior notice to the Administrative Agent, terminate in whole or reduce in part ratably any unused portion of the Delayed Draw Commitments; provided, however, that each partial reduction shall be in a minimum amount of \$500,000 or an integral multiple of \$100,000 in excess thereof.

(b) Mandatory. All outstanding Commitments shall terminate (i) in the case of the Interim Date Loan Commitments, on the Closing Date (after giving effect to any Borrowing occurring on such date) and (ii) in the case of the Delayed Draw Commitments, on the Delayed Draw Termination Date.

Section 2.6 Repayment of Loans. The Borrower promises to repay the Loans on the Termination Date.

Section 2.7 Optional Prepayments. The Borrower may, upon five (5) Business Days prior notice, prepay the outstanding principal amount of any Loan in whole or in part at any time (together with any breakage costs that may be owing pursuant to Section 2.16(a) after giving effect to such prepayment); provided, however, that each partial prepayment that is not of the entire outstanding amount under the DIP Facilities shall be in a minimum amount of \$1,000,000 and increments of \$250,000 in excess thereof.

Section 2.8 Mandatory Prepayments.

(a) Debt Issuances. Upon receipt on or after the Closing Date by any Loan Party or any of its Subsidiaries of Net Cash Proceeds arising from the incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness other than as permitted by clauses (a) through (c) of Section 8.1, the Borrower shall immediately pay or cause to be paid to the Administrative Agent an amount equal to 100% of such Net Cash Proceeds.

(b) Asset Sales and Property Loss Events. Upon receipt on or after the Closing Date by any Loan Party or any of its Subsidiaries of Net Cash Proceeds arising from (i) any Sale (other than Sales of property permitted under Section 8.4) by any Group Member of any of its property (which Sale, if not so permitted by Section 8.4, for the avoidance of doubt, must be approved in writing by the Administrative Agent and the Required Lenders prior to the consummation thereof) or (ii) any Property Loss Event with respect to any property of any Group Member, the Borrower shall immediately pay or cause to be paid to the Administrative Agent an amount equal to 100% of such Net Cash Proceeds.

(c) Excess Outstandings. On any date on which the aggregate principal amount of Loans outstanding hereunder exceeds the aggregate Commitments less any reserves established by the Administrative Agent in its sole discretion in respect of the Carve-Out and the Carve-Out Claims (or such lesser amount permitted to be outstanding prior to entry of the Final Order), the Borrower shall pay to the Administrative Agent an amount equal to such excess.

(d) Failure to issue the Final Order. The Borrower hereby directs the Administrative Agent to apply, to the extent the Bankruptcy Court shall not have entered the Final Order on or prior to the date that is 30 days following the entry of the Interim Order, all amounts remaining in the Controlled Deposit Account at such time to the repayment of the outstanding Obligations in accordance with the provisions set forth in Section 2.12.

(e) Application of Payments. Any payments made to the Administrative Agent pursuant to this Section 2.8 shall be applied to the Obligations in accordance with Section 2.12(b).

#### Section 2.9 Interest.

(a) Rate. All Loans and the outstanding amount of all other Obligations shall bear interest, in the case of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in clause (c) below, as follows: (i) in the case of Base Rate Loans, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin, each as in effect from time to time, (ii) in the case of Eurodollar Rate Loans, at a rate per annum equal to the sum of the Eurodollar Rate and the Applicable Margin, each as in effect for the applicable Interest Period, and (iii) in the case of other Obligations, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin for Loans that are Base Rate Loans, each as in effect from time to time.

(b) Payments. Interest accrued shall be payable in arrears (i) if accrued on the principal amount of any Loan, (A) at maturity (whether by acceleration or otherwise), (B) upon the payment or prepayment of the principal amount on which such interest has accrued and (C)(1) if such Loan is a Base Rate Loan, on the last Business Day of each calendar month commencing on the first such day following the making of such Loan, (2) if such Loan is a Eurodollar Rate Loan, on the last day of each Interest Period applicable to such Loan and (ii) if accrued on any other Obligation, on demand from any time after the time such Obligation is due and payable (whether by acceleration or otherwise).

(c) Default Interest. Notwithstanding the rates of interest specified in clause (a) above or elsewhere in any Loan Document, effective immediately upon the occurrence of any Event of Default for as long as such Event of Default shall be continuing, the principal balance of all Obligations (including any Obligation that bears interest by reference to the rate applicable to any other Obligation) shall bear interest at a rate that is 2% per annum in excess of the interest rate applicable to such Obligations from time to time, payable in cash on demand or, in the absence of demand, on the date that would otherwise be applicable.

(d) Maximum Interest. In no event shall the interest charged with respect to the Loans, the Notes or any other Obligations of the Borrower under the Loan Documents exceed the maximum amount permitted under the laws of the jurisdiction whose law is specified as the governing law of this document pursuant to Section 11.13 or of any other applicable jurisdiction.

For the purposes of making any such determination hereunder, the Loans hereunder shall be deemed a single loan in the amount of the Commitments. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable for the account of any Lender hereunder or any other Loan Document (the “Stated Rate”) would exceed the highest rate of interest permitted under any applicable law to be charged by such Lender (the “Maximum Lawful Rate”), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable for the account of such Lender shall be equal to the Maximum Lawful Rate; provided that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, the Borrower shall, to the extent permitted by law, continue to pay interest for the account of such Lender at the Maximum Lawful Rate until such time as the total interest received by the Lender is equal to the total interest which such Lender would have received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable for the account of such Lender shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which such Lender could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate with respect to such Lender. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate divided by the number of days in the year in which such calculation is made. If any Lender has received interest hereunder in excess of the Maximum Lawful Rate with respect to such Lender, such excess amount shall be applied to the reduction of the outstanding principal balance of its Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to the Borrower.

Section 2.10 Conversion and Continuation Options.

(a) Option. The Borrower may elect (i) in the case of any Eurodollar Rate Loan, (A) to continue such Eurodollar Rate Loan or any portion thereof for an additional Interest Period on the last day of the Interest Period applicable thereto and (B) to convert such Eurodollar Rate Loan or any portion thereof into a Base Rate Loan at any time on any Business Day, subject to the payment of any breakage costs required by Section 2.16(a), and (ii) in the case of Base Rate Loans, to convert such Base Rate Loans or any portion thereof into Eurodollar Rate Loans at any time on any Business Day upon 3 Business Days’ prior notice; provided, however, that, (x) for each Interest Period, the aggregate amount of Eurodollar Rate Loans having such Interest Period must be an integral multiple of \$250,000 and (y) no conversion in whole or in part of Base Rate Loans to Eurodollar Rate Loans and no continuation in whole or in part of Eurodollar Rate Loans shall be permitted at any time at which (1) an Event of Default shall be continuing and the Administrative Agent or the Required Lenders shall have determined in their respective sole discretion not to permit such conversions or continuations or (2) such continuation or conversion would be made during a suspension imposed by Section 2.15.

(b) Procedure. Each such election shall be made by giving the Administrative Agent at least 3 Business Days’ prior notice in substantially the form of Exhibit F (a “Notice of Conversion or Continuation”) duly completed. The Administrative Agent shall promptly notify each Lender of its receipt of a Notice of Conversion or Continuation and of the options selected therein. If the Administrative Agent does not receive a timely Notice of Conversion or Continuation from the Borrower containing a permitted election to continue or convert any Eurodollar Rate Loan, then, upon the expiration of the applicable Interest Period, such Loan shall



be automatically converted to a Base Rate Loan. Each partial conversion or continuation shall be allocated ratably among the Lenders in the applicable DIP Facility in accordance with their Pro Rata Share.

Section 2.11 Fees.

(a) Unused Commitment Fee. The Borrower agrees to pay to each Lender (other than a Defaulting Lender) a commitment fee on the actual daily amount by which the Commitment of such Lender exceeds its Pro Rata Share of the aggregate outstanding principal amount of Loans (the "Unused Commitment Fee") from the Closing Date through the Delayed Draw Termination Date at a rate per annum equal to 0.50% per annum, payable in arrears (x) on the last Business Day of each Fiscal Month, and (y) on the Delayed Draw Termination Date.

(b) Closing Fee. To induce the Lenders to enter into this Agreement, the Borrower shall pay on the Closing Date to Administrative Agent, for the ratable benefit of such Lenders that have signed this Agreement on or before the date hereof, a Closing Fee (the "Closing Fee") equal to 3.00% of each such Lender's Commitment.

(c) Additional Fees. The Borrower shall pay to the Administrative Agent and its Related Persons its reasonable and customary fees and expenses in connection with any payments made pursuant to Section 2.16(a) (Breakage Costs).

(d) Arrangement Fee. Borrower shall pay to the Administrative Agent an arrangement fee (the "Arrangement Fee"), for its own account, in the amount of \$100,000, payable in cash on the Closing Date.

(e) Structuring Fee. The Administrative Agent shall receive a structuring fee (the "Structuring Fee"), for its own account, in the amount of \$400,000, payable in cash on the Closing Date and such Structuring Fee shall be credited pro rata against the principal amount of the Pre-Petition Obligations.

Section 2.12 Application of Payments.

(a) Application of Prepayments, Collections and Asset Sales. Subject to the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order), the proceeds of Collateral or Pre-Petition Collateral, any amounts held on account of the Collateral or the Pre-Petition Collateral, and all payments and collections received by the Debtors shall be applied as follows:

(i) From and after the entry of the Interim Order until the Termination Declaration Date, all Cash Collateral and the proceeds of Collateral or Pre-Petition Collateral, any amounts held on account of the Collateral or Pre-Petition Collateral, and all payments and collections received by Borrower shall be applied to reduce the Obligations then due and owing as follows:

(1) first, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Administrative Agent,

(2) second, without duplication, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Secured Parties,

(3) third, to pay interest then due and payable in respect of the Loans,

(4) fourth, to the ratable payment of all other Obligations then due and payable,

(5) fifth, to pay Pre-Petition Credit Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Pre-Petition Agent,

(6) sixth, without duplication, to pay Pre-Petition Credit Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Pre-Petition Secured Parties,

(7) seventh, to pay interest then due and payable in respect of the Pre-Petition Obligations under the Pre-Petition Credit Agreement, and

(8) eighth, to the extent permitted by the Loan Documents, the Pre-Petition Loan Documents, the Interim Order or the Final Order, to pay all expenses set forth in the Budget.

Notwithstanding the foregoing, following delivery by the Administrative Agent of a Carve-Out Trigger Notice to the Borrower, no Professional Fees or Committee Professional Fees may be paid with the proceeds of Collateral until such Professional Fees or Committee Professional Fees have been paid first from retainers held by such professionals which payments shall reduce the Carve-Out Cap on a dollar-for-dollar basis.

(ii) Subject and subordinate to the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order), upon the occurrence of the Termination Declaration Date, and after payment or other funding of all amount of the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order) including unpaid expenses incurred prior to the Termination Declaration Date in accordance with the Budget:

(1) first, to pay the Obligations in respect of any cost or expense, reimbursements, fees or indemnities due to the Administrative Agent,

(2) second, to permanently reduce the Obligations, including, without duplication, any cost or expense, reimbursements, fees or indemnities owing to the Secured Parties until indefeasibly paid in full in cash and, as applicable, cash collateralized,

(3) third, to pay Pre-Petition Credit Obligations in respect of any cost or expense, reimbursements, fees or indemnities due to the Pre-Petition Agent,

(4) fourth, to permanently reduce Pre-Petition Credit Obligations owing to the “Revolving Credit Lenders”, the “L/C Issuers” (as each such term is defined in the Pre-Petition Credit Agreement), until indefeasibly paid in full in cash (or if applicable, cash collateralized) in accordance with the provisions set forth in the Pre-Petition Credit Agreement and other “Loan Documents” (as defined therein),

(5) fifth, to permanently reduce the remaining Pre-Petition Credit Obligations in accordance with the provisions of Section 2.12(c) of the Pre-Petition Credit Agreement, and,

(6) sixth, to the Debtors for distribution in the manner required by the Bankruptcy Code or order of the Bankruptcy Court.

(b) Application of Payments Generally. All repayments of any Loans shall be applied first, to repay such Loans outstanding as Base Rate Loans and then, to repay such Loans outstanding as Eurodollar Rate Loans, with those Eurodollar Rate Loans having earlier expiring Interest Periods being repaid prior to those having later expiring Interest Periods. If sufficient amounts are not available to repay all outstanding Obligations described in any priority level set forth in this Section 2.12, the available amounts shall be applied, unless otherwise expressly specified herein, to such Obligations ratably based on the proportion of the Secured Parties’ interest in such Obligations. Any priority level set forth in this Section 2.12 that includes interest shall include all such interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding.

(c) Professional Escrow Account. Upon the sale of all or substantially all of the Debtors’ assets pursuant to a transaction to which the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in their respective sole discretion, the Administrative Agent shall set aside (i) in segregated escrow accounts, each for the benefit, individually, of non-professional administrative creditors covered by the Carve-Out, the Debtor Professionals, and the Committee Professionals, proceeds therefrom equal to the maximum amount of accrued and unpaid Carve-Out Claims up to the Carve-Out Cap to be distributed by such escrow agent(s) in accordance with the interim compensation procedures established for the Cases by the Order Establishing Procedures for Interim Compensation [ECF No. 160] and (ii) \$50,000 in another segregated escrow account to fund the fees, costs and expenses incurred in connection with the conversion of the Cases to Chapter 7 of the Bankruptcy Code and the liquidation of the Debtors’ estates.

### Section 2.13 Payments and Computations.

(a) Procedure. The Borrower shall make each payment under any Loan Document not later than 1:00 p.m. on the day when due to the Administrative Agent by wire transfer to the following account (or at such other account or by such other means to such other address as the Administrative Agent shall have notified the Borrower in writing within a reasonable time prior to such payment) in immediately available Dollars and without setoff or counterclaim:

ABA # : 021-001-033  
Bank Name: Deutsche Bank Trust Company Americas  
Bank Address: 60 Wall Street  
New York, NY  
Account #: 50-279-513  
Account Name: GECC CFS CIF Collection A/C  
Reference: CFK1745 SP Newsprint

The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in Section 2.12; provided, however, that the Administrative Agent shall be entitled to set off the funding shortfall against any Defaulting Lender's Pro Rata Share of all payments received from the Borrower and hold, in a non-interest bearing account, all payments received by the Administrative Agent for the benefit of any Defaulting Lender pursuant to this Agreement as cash collateral for any unfunded reimbursement obligations of such Defaulting Lender until the Obligations are paid in full in cash, and all Commitments have been terminated, and upon such unfunded obligations owing by a Defaulting Lender becoming due and payable, the Administrative Agent shall be authorized to use such cash collateral to make such payment on behalf of such Defaulting Lender. For the avoidance of doubt, any amounts held in such account by the Administrative Agent shall be, for all purposes under this Agreement, deemed to be amounts paid by the Borrower to such Lender. The Lenders shall make any payment under any Loan Document in immediately available Dollars and without setoff or counterclaim. Payments received by the Administrative Agent after 1:00 p.m. shall be deemed to be received on the next Business Day.

(b) Computations of Interests and Fees. All computations of interest and of fees shall be made by the Administrative Agent on the basis of a year of 360 days (or, in the case of Base Rate Loans whose interest rate is calculated based on the rate set forth in clause (a) of the definition of "Base Rate", 365/366 days), in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest and fees are payable. Each determination of an interest rate or the amount of a fee hereunder shall be made by the Administrative Agent (including determinations of a Eurodollar Rate or Base Rate in accordance with the definitions of "Eurodollar Rate" and "Base Rate", respectively) and shall be conclusive, binding and final for all purposes, absent manifest error.

(c) Payment Dates. Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, the due date for such payment shall be extended to the next succeeding Business Day without any increase in such payment as a result of additional interest or fees; provided, however, that such interest and fees shall continue accruing as a result of such extension of time.

(d) Advancing Payments. Unless the Administrative Agent shall have received notice from the Borrower to the Lenders prior to the date on which any payment is due hereunder that the Borrower will not make such payment in full, the Administrative Agent may assume that the Borrower has made such payment in full to the Administrative Agent on such date and the Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent that the Borrower shall not have made such payment in full to the Administrative Agent, each Lender shall repay to the Administrative Agent on demand such amount distributed to such Lender together with interest thereon (at the Federal Funds Rate for the first Business Day and

thereafter, at the rate applicable to Base Rate Loans under the DIP Facilities) for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Administrative Agent.

Section 2.14 Evidence of Debt.

(a) Records of Lenders. Each Lender shall maintain in accordance with its usual practice accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. In addition, each Lender having sold a participation in any of its Obligations or having identified an SPV as such to the Administrative Agent, acting as agent of the Borrower solely for this purpose and solely for tax purposes, shall establish and maintain at its address referred to in Section 11.11 (or at such other address as such Lender shall notify the Borrower) a record of ownership, in which such Lender shall register by book entry (A) the name and address of each such participant and SPV (and each change thereto, whether by assignment or otherwise) and (B) the rights, interest or obligation of each such participant and SPV in any Obligation, in any Commitment and in any right to receive any payment hereunder.

(b) Records of Administrative Agent. The Administrative Agent, acting as agent of the Borrower solely for tax purposes and solely with respect to the actions described in this Section 2.14, shall establish and maintain at its address referred to in Section 11.11 (or at such other address as the Administrative Agent may notify the Borrower) (A) a record of ownership (the “Register”) in which the Administrative Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of the Administrative Agent and each Lender in the Loans, each of their obligations under this Agreement to participate in each Loan, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses of the Lenders (and each change thereto pursuant to Section 2.18 (Substitution of Lenders) and Section 11.2 (Assignments and Participations; Binding Effect)), (2) the Commitments of each Lender, (3) the amount of each Loan and each funding of any participation described in clause (A) above, for Eurodollar Rate Loans, the Interest Period applicable thereto, (4) the amount of any principal or interest due and payable or paid and (5) any other payment received by the Administrative Agent from the Borrower and its application to the Obligations. The Register shall be available for inspection by the Borrower at any reasonable time and from time to time upon reasonable prior notice.

(c) Registered Obligations. Notwithstanding anything to the contrary contained in this Agreement, the Loans (including any Notes evidencing such Loans) are registered obligations, the right, title and interest of the Lenders and their assignees in and to such Loans, shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 2.14 and Section 11.2 shall be construed so that the Loans are at all times maintained in “registered form” within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(d) Prima Facie Evidence. The entries made in the Register and in the accounts maintained pursuant to clauses (a) and (b) above shall, to the extent permitted by applicable Requirements of Law, be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, however, that no error in such account and no failure of any Lender or the Administrative Agent to maintain any such account shall affect the obligations of any Loan Party to repay the Loans in accordance with their terms. In addition, the Loan Parties, the

Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as a Lender, for all purposes of this Agreement, notwithstanding notice to the contrary. Information contained in the Register with respect to any Lender shall be available for access by the Borrower, the Administrative Agent or such Lender at any reasonable time and from time to time upon reasonable prior notice. No Lender shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender unless otherwise agreed by the Administrative Agent.

(e) Notes. Upon any Lender's request, the Borrower shall promptly execute and deliver Notes to such Lender evidencing the Loans of such Lender substantially in the form of Exhibit B; provided, however, that only one Note shall be issued to each Lender, except (i) to an existing Lender exchanging existing Notes to reflect changes in the Register relating to such Lender, in which case the new Notes delivered to such Lender shall be dated the date of the original Notes and (ii) in the case of loss, destruction or mutilation of existing Notes and similar circumstances for which a reasonably satisfactory affidavit of loss is provided to the Borrower. Each Note, if issued, shall only be issued as means to evidence the right, title or interest of a Lender or a registered assignee in and to the related Loan, as set forth in the Register, and in no event shall any Note be considered a bearer instrument or obligation.

Section 2.15 Suspension of Eurodollar Rate Option. Notwithstanding any provision to the contrary in this Article II, the following shall apply:

(a) Interest Rate Unascertainable, Inadequate or Unfair. In the event that (A) the Administrative Agent determines that adequate and fair means do not exist for ascertaining the applicable interest rates by reference to which the Eurodollar Rate is determined or (B) the Required Lenders notify the Administrative Agent that the Eurodollar Rate for any Interest Period will not adequately reflect the cost to the Lenders of making or maintaining such Loans for such Interest Period, the Administrative Agent shall promptly so notify the Borrower and the Lenders, whereupon the obligation of each Lender to make or to continue Eurodollar Rate Loans shall be suspended as provided in clause (c) below until the Administrative Agent shall notify the Borrower that the Required Lenders have determined that the circumstances causing such suspension no longer exist.

(b) Illegality. If any Lender determines that the introduction of, or any change in or in the interpretation of, any Requirement of Law after the date of this Agreement shall make it unlawful, or any Governmental Authority shall assert that it is unlawful, for any Lender or its applicable lending office to make Eurodollar Rate Loans or to continue to fund or maintain Eurodollar Rate Loans, then, on notice thereof and demand therefor by such Lender to the Borrower through the Administrative Agent, the obligation of such Lender to make or to continue Eurodollar Rate Loans shall be suspended as provided in clause (c) below until such Lender shall, through the Administrative Agent, notify the Borrower that it has determined that it may lawfully make Eurodollar Rate Loans.

(c) Effect of Suspension. If the obligation of any Lender to make or to continue Eurodollar Rate Loans is suspended, (A) the obligation of such Lender to convert Base Rate Loans into Eurodollar Rate Loans shall be suspended, (B) such Lender shall make a Base Rate Loan at any time such Lender would otherwise be obligated to make a Eurodollar Rate Loan, (C) the Borrower may revoke any pending Notice of Borrowing or Notice of Conversion or Continuation to make or continue any Eurodollar Rate Loan or to convert any Base Rate Loan into a Eurodollar Rate Loan and (D) each Eurodollar Rate Loan of such Lender shall automatically and

immediately (or, in the case of any suspension pursuant to clause (a) above, on the last day of the current Interest Period thereof) be converted into a Base Rate Loan.

Section 2.16 Breakage Costs; Increased Costs; Capital Requirements.

(a) Breakage Costs. The Borrower shall compensate each Lender, upon demand from such Lender to such Borrower (with copy to the Administrative Agent), for all Liabilities (including, in each case, those incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to prepare to fund, to fund or to maintain the Eurodollar Rate Loans of such Lender to the Borrower but excluding any loss of the Applicable Margin on the relevant Loans) that such Lender may incur (A) to the extent, for any reason other than solely by reason of such Lender being a Non-Funding Lender, a proposed Borrowing, conversion into or continuation of Eurodollar Rate Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Conversion or Continuation or in a similar request made by telephone by the Borrower, (B) to the extent any Eurodollar Rate Loan is paid (whether through a scheduled, optional or mandatory prepayment) or converted to a Base Rate Loan (including because of Section 2.15) on a date that is not the last day of the applicable Interest Period or (C) as a consequence of any failure by the Borrower to repay Eurodollar Rate Loans when required by the terms hereof. For purposes of this clause (a), each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it using a matching deposit or other borrowing in the London interbank market.

(b) Increased Costs. If at any time any Lender determines that, after the date hereof, the adoption of, or any change in or in the interpretation, application or administration of, or compliance with, any Requirement of Law (other than any imposition or increase of Eurodollar Reserve Requirements) from any Governmental Authority shall have the effect of (i) increasing the cost to such Lender of making, funding or maintaining any Eurodollar Rate Loan or to agree to do so or of participating, or agreeing to participate, in extensions of credit or (ii) imposing any other cost to such Lender with respect to compliance with its obligations under any Loan Document, then, upon demand by such Lender (with copy to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender amounts sufficient to compensate such Lender for such increased cost; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directions promulgated thereunder or issued in connection therewith and (y) 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 or foreign regulatory authorities shall in each case be deemed to have been introduced or adopted after the Closing Date.

(c) Increased Capital Requirements. If at any time any Lender determines that, after the date hereof, the adoption of, or any change in or in the interpretation, application or administration of, or compliance with, any Requirement of Law (other than any imposition or increase of Eurodollar Reserve Requirements) from any Governmental Authority regarding capital adequacy, reserves, special deposits, compulsory loans, insurance charges against property of, deposits with or for the account of, Obligations owing to, or other credit extended or participated in by, any Lender or any similar requirement (in each case other than any imposition or increase of Eurodollar Reserve Requirements) shall have the effect of reducing the rate of return on the capital of such Lender's (or any corporation controlling such Lender) as a consequence of its obligations under or with respect to any Loan Document to a level below that which, taking into account the capital adequacy policies of such Lender or corporation, such Lender or corporation could have

achieved but for such adoption or change, then, upon demand from time to time by such Lender (with a copy of such demand to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender amounts sufficient to compensate such Lender for such reduction; provided, that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines and directions promulgated thereunder or issued in connection therewith and (y) 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 or foreign regulatory authorities shall in each case be deemed to have been introduced or adopted after the Closing Date.

(d) Compensation Certificate. Each demand for compensation under this Section 2.16 shall be accompanied by a certificate of the Lender claiming such compensation, setting forth the amounts to be paid hereunder, which certificate shall be conclusive, binding and final for all purposes, absent manifest error. In determining such amount, such Lender may use any reasonable averaging and attribution methods.

(e) This Section 2.16 shall not apply to Taxes or Other Taxes indemnified pursuant to Section 2.17 and any taxes excluded from the definition of Taxes pursuant to Section 2.17(a).

#### Section 2.17 Taxes.

(a) Payments Free and Clear of Taxes. Except as otherwise required by law or provided in this Section 2.17, each payment by or on behalf of any Loan Party under any Loan Document shall be made free and clear of all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (and without deduction for any of them) (collectively, but excluding the taxes set forth in clauses (i), (ii), (iii) and (iv) below, the “Taxes”) other than for (i) taxes imposed on or measured by net income, profits or overall gross income or receipts (including branch profits taxes or any similar taxes) and franchise or similar taxes, in each case imposed on any Secured Party as a result of a present or former connection between such Secured Party and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any Secured Party having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document), (ii) U.S. federal withholding taxes imposed pursuant to any Requirement of Law in existence at the time the recipient acquires its applicable interest in the applicable Loan or Commitment (other than pursuant to an assignment under Section 2.18) or changes its applicable lending office, except to the extent (A) such recipient’s assignor, if any, was entitled, immediately prior to the assignment to such recipient, to receive additional amounts in respect of such withholding tax pursuant to this Section 2.17(a) or (B) such recipient was entitled, immediately prior to changing its applicable lending office, to additional amounts in respect of such withholding tax pursuant to this Section 2.17(a), (iii) taxes that are directly attributable to the failure by any Secured Party to deliver any documentation required to be delivered pursuant to Section 2.17(f) or (g) or (iv) any United States federal withholding taxes current that are imposed pursuant to Sections 1471 through 1474 of the Code (or any amended or successor provisions that are substantively comparable and not materially more onerous to comply with), and any current or future regulations or official interpretations thereof ( “FATCA”).



(b) Gross-Up. If any Taxes shall be required by law to be deducted from or in respect of any amount payable under any Loan Document by or on behalf of any Loan Party to any Secured Party (i) the amount payable by the applicable Loan Party shall be increased as necessary to ensure that, after all required deductions for Taxes are made (including deductions applicable to any increases to any amount under this Section 2.17), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the relevant withholding agent shall make such deductions, (iii) the relevant withholding agent shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, the relevant withholding agent (if such agent is not the Administrative Agent) shall deliver to the Administrative Agent an original or certified copy of a receipt evidencing such payment or other evidence of payment satisfactory to the Administrative Agent.

(c) Other Taxes. In addition, the Borrower agrees to pay, and authorizes the Administrative Agent to pay in its name, any stamp, documentary, excise or similar tax, charges or levies imposed by any applicable Requirement of Law or Governmental Authority and all Liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction to be performed thereunder (collectively, “Other Taxes”). Within 30 days after the date of any payment of Taxes or Other Taxes by any Loan Party, the Borrower shall furnish to the Administrative Agent, at its address referred to in Section 11.11, the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment satisfactory to the Administrative Agent.

(d) Indemnification. The Borrower shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to the Administrative Agent), each Secured Party for all Taxes imposed with respect to any payments made pursuant to any Loan Documents and Other Taxes (including any such Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.17) paid by such Secured Party and any Liabilities arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. A certificate of the Secured Party (or of the Administrative Agent on behalf of such Secured Party) claiming any compensation under this clause (d), setting forth the amounts to be paid thereunder and an explanation thereof and delivered to the Borrower with copy to the Administrative Agent, shall be conclusive, binding and final for all purposes, absent manifest error. In determining such amount, the Administrative Agent and such Secured Party may use any reasonable methods.

(e) Mitigation. Any Lender claiming any additional amounts payable pursuant to this Section 2.17 shall use its reasonable efforts (consistent with its internal policies and Requirements of Law) to change the jurisdiction of its lending office or take other steps if such a change or other steps would reduce any such additional amounts (or any similar amount that may thereafter accrue) and would not, in the reasonable determination of such Lender, be otherwise disadvantageous to such Lender.

(f) Tax Forms Establishing an Exemption from U.S. Federal Income Tax Withholding. (i) Each Non-U.S. Lender Party shall, (v) on or prior to the date such Non-U.S. Lender Party becomes a “Non-U.S. Lender Party” hereunder, (w) on or prior to any date such Non-U.S. Lender Party acquires additional Loans or Commitments hereunder pursuant to an Assignment, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if

requested by the Borrower or the Administrative Agent (or, in the case of a participant or SPV, the relevant Lender), provide the Administrative Agent and the Borrower (or, in the case of a participant or SPV, the relevant Lender) with two properly completed originals of one of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business), W-8BEN (claiming exemption from U.S. withholding tax under an income tax treaty) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to the Borrower and the Administrative Agent that such Non-U.S. Lender Party is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and that any interest being received is not effectively connected income, (C) with respect to a Non-U.S. Lender Party that is not acting for its own account (e.g., where the Non-U.S. Lender Party is a partnership or a participating lender), Form W-8IMY (and related required documentation) or any subsequent versions thereof or successors thereto or (D) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to exemption from United States withholding tax with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless the Borrower and the Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding tax, the relevant withholding agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory or treaty rate.

(ii) Each U.S. Lender Party shall (A) on or prior to the date such U.S. Lender Party becomes a “U.S. Lender Party” hereunder, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (f) and (D) from time to time if requested by the Borrower or the Administrative Agent (or, in the case of a participant or SPV, the relevant Lender), provide the Administrative Agent and the Borrower (or, in the case of a participant or SPV, the relevant Lender) with two properly completed originals of Form W-9 (certifying that such U.S. Lender Party is entitled to an exemption from U.S. backup withholding tax) or any successor form.

(iii) Each Lender having sold a participation in any of its Obligations or identified an SPV as such to the Administrative Agent shall collect from such participant or SPV the documents described in this clause (f) and provide them to the Borrower and the Administrative Agent.

Notwithstanding anything to the contrary, nothing in this Section 2.17(f) shall require any Person to deliver any documentation that it is not legally eligible to deliver.

(g) Other Tax Forms. In addition to its obligations under paragraph (f), each Lender agrees, (i) if such Lender qualifies for a reduction in U.S. federal withholding tax, to provide the Administrative Agent and the Borrower with any forms, certifications or other documentation required to establish entitlement to such reduction and (ii) if requested by the Administrative Agent or the Borrower, to provide the Administrative Agent and the Borrower with

any forms, certifications or other documentation that such Lender is legally entitled to provide to establish (A) any available exemption from, or reduction in the rate of, any applicable Taxes or Other Taxes or (B) the identity or status of such Lender.

(h) FATCA Certification. If a payment made to a Lender under this Agreement may be subject to U.S. federal withholding tax under the FATCA, such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law and such additional documentation reasonably requested by the Borrower or the Administrative Agent to comply with its withholding obligations, to determine whether such Lender has complied with such Lender's obligations under such Sections and to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this subsection (h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

#### Section 2.18 Substitution of Lenders.

(a) Substitution Right. In the event that any Lender in any DIP Facility that is not an Affiliate of the Administrative Agent (an "Affected Lender"), (i) makes a claim under clause (b) (Increased Costs) or (c) (Increased Capital Requirements) of Section 2.16, (ii) notifies the Borrower pursuant to Section 2.15(b) (Illegality) that it becomes illegal for such Lender to continue to fund or make any Eurodollar Rate Loan in such DIP Facility, (iii) makes a claim for payment pursuant to Section 2.17(b) (Gross-Up) or a claim for Taxes under Section 2.17(d) (Indemnification), (iv) becomes a Defaulting Lender or Impacted Lender with respect to such DIP Facility or (v) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Required Lenders is obtained but that requires the consent of other Lenders, the Borrower may either pay in full such Affected Lender with respect to amounts due with the consent of the Administrative Agent or substitute for such Affected Lender any Lender or any Affiliate or Approved Fund of any Lender or any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent (in each case, a "Substitute Lender"). Notwithstanding the foregoing, with respect to a Lender that is a Defaulting Lender or an Impacted Lender, the Borrower or the Administrative Agent may obtain a Substitute Lender and execute an Assignment on behalf of such Defaulting Lender or an Impacted Lender at any time and without prior notice to such Defaulting Lender or an Impacted Lender and cause its Loans and Commitments to be sold and assigned at par, and if such Substitute Lender is not an existing Lender or an Affiliate or Approved Fund of any existing Lender, such Substitute Lender shall be acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent and, as long as no Event of Default is continuing, the Borrower.

(b) Procedure. To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender under such DIP Facility, the Borrower shall deliver a notice to the Administrative Agent and such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery to the Administrative Agent by the Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations (other than contingent indemnification obligations not then payable) owing to such Affected Lender (including those that will be owed because of such payment and all Obligations (other than contingent indemnification obligations not then payable) that would be owed to such Lender if it was solely a Lender) and (ii)

in the case of a substitution, (A) payment of the assignment fee set forth in Section 11.2(c) and (B) an Assignment.

(c) Effectiveness. Upon satisfaction of the conditions set forth in clause (b) above, the Administrative Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full, such Affected Lender's Commitments in such DIP Facility shall be terminated and (ii) in the case of any substitution in any DIP Facility, (A) the Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents with respect to such DIP Facility, except that the Affected Lender shall retain such rights expressly providing that they survive the repayment of the Obligations and the termination of the Commitments, (B) the Substitute Lender shall become a "Lender" hereunder having a Commitment in the amount of such Affected Lender's Commitment and (C) the Affected Lender shall execute and deliver to the Administrative Agent an Assignment to evidence such substitution and deliver any Note in its possession; provided, however, that the failure of any Affected Lender to execute any such Assignment or deliver any such Note shall not render such sale and purchase (or the corresponding assignment) invalid.

Section 2.19 Eligible Accounts and Eligible Inventory. All of the Accounts owned by Borrower or any Subsidiary Guarantor and reflected in the most recent Borrowing Base Certificate delivered by Borrower to Administrative Agent shall be "Eligible Accounts" for purposes of this Agreement, except any Account to which any of the exclusionary criteria set forth in Section 2.19 of the Pre-Petition Credit Agreement applies. All of the inventory owned by the Borrower and reflected in the most recent Borrowing Base Certificate delivered by Borrower to Administrative Agent shall be "Eligible Inventory" for purposes of this Agreement, except any Inventory to which any of the exclusionary criteria set forth in Section 2.20 of the Pre-Petition Credit Agreement applies. In addition, Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the criteria set forth in Sections 2.19 and 2.20 of the Pre-Petition Credit Agreement and to establish new criteria in its reasonable credit judgment.

### ARTICLE III CONDITIONS TO LOANS

Section 3.1 Conditions Precedent to Effectiveness. This Agreement, including the obligation of each Lender to make any Loan on the Closing Date, is subject to the satisfaction or due waiver of each of the following conditions precedent:

(a) Certain Documents. The Administrative Agent shall have received on or prior to the Closing Date each of the following, each dated the Closing Date unless otherwise agreed by the Administrative Agent, in form and substance satisfactory to the Administrative Agent and the Lenders in their respective sole discretion:

(i) this Agreement duly executed by Holdings and the Borrower and, for the account of each Lender having requested the same by notice to the Administrative Agent and the Borrower, Notes conforming to the requirements set forth in Section 2.14(e);

(ii) (A) the Guaranty and Security Agreement, duly executed by each Loan Party, together with (x) copies of UCC, Intellectual Property and other appropriate search reports and of all effective prior filings listed therein, together with evidence of the termination of such prior filings and other documents with respect to the priority of the security interest of the Administrative Agent in the Collateral, in each case as may be reasonably requested by the Administrative Agent (excluding, for the avoidance of doubt, termination of the liens and related filings securing the “Obligations” under the Pre-Petition Credit Agreement), and (y) all certificates representing all Securities being pledged pursuant to such Guaranty and Security Agreement and related undated powers or endorsements duly executed in blank, and (B) all Control Agreements that, in the reasonable judgment of the Administrative Agent, are required for the Loan Parties to comply with the Loan Documents as of the Closing Date, duly executed by the applicable Loan Parties and the applicable financial institution;

(iii) duly executed favorable opinions of counsel to the Loan Party in New York and Georgia, each addressed to the Administrative Agent and the Lenders, and addressing such matters as the Administrative Agent may reasonably request;

(iv) a copy of each Constituent Document of each Loan Party that is on file with any Governmental Authority in any jurisdiction, certified as of a recent date by such Governmental Authority, together with, if applicable, certificates attesting to the good standing of such Loan Party in such jurisdiction and each other jurisdiction where such Loan Party is qualified to do business as a foreign entity or where such qualification is necessary (and, if appropriate in any such jurisdiction, related tax certificates);

(v) a certificate of the secretary or other officer of each Loan Party in charge of maintaining books and records of such Loan Party certifying as to (A) the names and signatures of each officer of such Loan Party authorized to execute and deliver any Loan Document, (B) the Constituent Documents of such Loan Party attached to such certificate are complete and correct copies of such Constituent Documents as in effect on the date of such certification (or, for any such Constituent Document delivered pursuant to clause (iv) above, that there have been no changes from such Constituent Document so delivered) and (C) the resolutions of such Loan Party’s board of directors or other appropriate governing body approving and authorizing the execution, delivery and performance of each Loan Document to which such Loan Party is a party;

(vi) a certificate of a Responsible Officer of the Borrower to the effect that each condition set forth in Section 3.2(b) has been satisfied;

(vii) insurance certificates in form and substance satisfactory to the Administrative Agent demonstrating that the insurance policies required by Section 7.5 are in full force and effect and have all endorsements required by such Section 7.5;

(viii) (x) the Consolidated unaudited balance sheet of Holdings as of the close of the Fiscal Month (and that portion of the Fiscal Year ending as of the close of such Fiscal Month) ending on or about [\_\_\_], 2011 and (y) the related Consolidated income statement for such Fiscal Month (and that portion of the Fiscal Year ending as of the close of such Fiscal Month), in each case setting forth in comparative form the figures for the corresponding periods in the prior Fiscal Year and in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the Consolidated and

consolidating financial position, results of operations and cash flow of Holdings as at the dates indicated and for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments) and in each case otherwise reasonably satisfactory to the Administrative Agent;

(ix) the Initial Budget, in form and substance acceptable to the Administrative Agent and the Required Lenders in their respective sole discretion;

(x) duly executed originals of an initial Borrowing Base Certificate from Borrower, dated the Closing Date, reflecting information concerning Eligible Accounts and Eligible Inventory of Borrower dated as of the date of the most recently delivered Borrowing Base Certificate under and as defined in the Pre-Petition Credit Agreement; and

(xi) such other documents and information as any Lender through the Administrative Agent may reasonably request.

(b) Fees and Expenses. There shall have been paid to the Administrative Agent, for the account of the Administrative Agent, its Related Persons or any Lender, as the case may be, all fees and all reimbursements of costs or expenses, in each case due and payable under any Loan Document on or before the Closing Date.

(c) Consents. The Administrative Agent shall have received satisfactory evidence that each Group Member, after giving effect to the Interim Order, shall have received all consents and authorizations required pursuant to any material Contractual Obligation with any other Person and shall have obtained all Permits of, and effected all notices to and filings with, any Governmental Authority, in each case, as may be necessary in connection with the consummation of the transactions contemplated in any Loan Document.

(d) Lien Priority; Automatic Perfection. The Administrative Agent shall have received on or prior to the Closing Date, pursuant to (i) Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, (ii) the Loan Documents and (iii) the Interim Order, a fully perfected, first priority security interest in the Collateral, which security interest shall be continuing, valid, binding, enforceable, non-avoidable and automatically perfected and shall be subject and subordinate solely to the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order) and to Pre-Petition Permitted Senior Encumbrances.

(e) Collateral. In order to create in favor of the Collateral Agent, for the benefit of Secured Parties, a valid, perfected first priority security interest in the Collateral, subject to the terms of the Interim Order, each Loan Party shall have delivered to the Administrative Agent evidence that each Loan Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument and made or caused to be made any other filing and recording reasonably required by the Administrative Agent and the Lenders, including each security document listed on Schedule 3.2(e) hereof.

(f) Interim Order. The Bankruptcy Court shall have entered the Interim Order.

(g) No Relief. No pleading or application seeking relief affecting the provision of the DIP Facilities shall have been filed in the Bankruptcy Court by any Debtor.

(h) [Reserved].

(i) Cash Management Order; Other Orders. The cash management order entered by the Bankruptcy Court on November 17, 2011 shall be in full force and effect and has not been amended without the consent of the Administrative Agent and the Required Lenders in their respective sole discretion.

(j) No Litigation. Except as otherwise acceptable to the Administrative Agent and the Required Lenders, (i) no litigation shall have commenced which challenges the Obligations or the Pre-Petition Credit Obligations and (ii) no Material Adverse Effect shall have occurred since the Petition Date.

(k) [Reserved].

(l) Bank Regulatory Information. The Lenders shall have received at least prior to the Closing Date all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the PATRIOT Act

(m) Pre-Petition Lender Consent. In accordance with the provisions of the Pre-Petition Credit Agreement, the Pre-Petition Agent and the Pre-Petition Required Lenders shall have consented to the priming of the Pre-Petition Secured Parties’ Liens under the Pre-Petition Credit Agreement and the Loan Documents under and as defined in the Pre-Petition Credit Agreement by the Liens under the Loan Documents in favor of the Secured Parties and the Administrative Agent, and such consent shall be binding on all Pre-Petition Secured Parties.

Section 3.2 Conditions Precedent to Each Loan. The obligation of each Lender on any date (including the Closing Date) to make any Loan is subject to the satisfaction of each of the following conditions precedent:

(a) Request. The Administrative Agent shall have received a written and duly executed and completed Notice of Borrowing at least 5 Business Days prior to the date of such requested Borrowing. The representations and warranties set forth in any Notice of Borrowing (or any certificate delivered in connection therewith) shall be deemed to be made on and as of such date and again on and as of the date of the relevant Loan and the acceptance of the proceeds thereof.

(b) Representations and Warranties; No Defaults. The following statements shall be true on such date, both before and after giving effect to such Borrowing: (i) the representations and warranties set forth in any Loan Document shall be true and correct (A) if such date is the Closing Date, on and as of such date or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date and (B) otherwise, in all material respects on and as of such date or, to the extent such representations and warranties expressly relate to an earlier date, on and as of such earlier date, except for such changes as are expressly permitted by the terms of this Agreement and (ii) no continuing default or continuing Event of Default shall exist both before and after giving pro forma effect to the making of such Loan.

(c) Orders. The Interim Order or the Final Order, as the case may be, shall be in full force and effect and shall not have been reversed, modified, stayed or amended unless such reversal, modification, stay or amendment is acceptable to the Administrative Agent and the Required Lenders in their respective sole discretion.

(d) Additional Matters. The Administrative Agent shall have received on or prior to the date of such requested Borrowing such additional documents and information as any Lender, through the Administrative Agent, may reasonably request on or prior to the date of the Notice of Borrowing.

(e) Cash on Hand. After giving effect to any Loan and the contemporaneous uses of proceeds thereof, the aggregate amount of cash balances (measured on a cash basis) in all deposit accounts (including all Controlled Deposit Accounts and the Cash Collateral Account) of the Loan Parties and the value of all Cash Equivalents of the Loan Parties (including all securities entitlements in the Controlled Securities Accounts) would not exceed \$5,000,000.

(f) Weekly Draws. Unless otherwise consented to by the Administrative Agent, the most recent Delayed Draw Funding Date shall have occurred not less than one calendar week prior to the proposed Delayed Draw Funding Date.

Section 3.3 Determinations of Initial Borrowing Conditions. For purposes of determining compliance with the conditions specified in Section 3.1, each Lender shall be deemed to be satisfied with each document and each other matter required to be satisfactory to such Lender unless, prior to the Closing Date, the Administrative Agent receives notice from such Lender specifying such Lender's objections and such Lender has not made available its Pro Rata Share of any Borrowing scheduled to be made on the Closing Date.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

To induce the Lenders and the Administrative Agent to enter into the Loan Documents, each of Holdings and the Borrower (and, to the extent set forth in any other Loan Document, each other Loan Party) represents and warrants to each of them each of the following on and as of each date applicable pursuant to Section 3.2:

Section 4.1 Corporate Existence; Compliance with Law. Upon entry of the Interim Order or the Final Order, as applicable, each Group Member (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) is duly qualified to do business as a foreign entity and in good standing under the laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing would not, in the aggregate, have a Material Adverse Effect, (c) has all requisite power and authority and the legal right to own, pledge, mortgage and operate its property, to lease or sublease any property it operates under lease or sublease and to conduct its business as now or currently proposed to be conducted, (d) is in compliance with its Constituent Documents, (e) is in compliance with all applicable Requirements of Law except where the failure to be in compliance would not have a Material Adverse Effect and (f) has all necessary Permits from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction, to the extent required for such ownership, lease, sublease, operation, occupation or conduct of business, except where the failure to obtain such Permits, make such filings or give such notices would not, in the aggregate, have a Material Adverse Effect.



#### Section 4.2      Loan Documents.

(a)      Power and Authority. Upon entry of the Interim Order or the Final Order, as applicable, the execution, delivery and performance by each Loan Party of the Loan Documents and other transactions contemplated therein (i) are within such Loan Party's corporate or similar powers and, at the time of execution thereof, have been duly authorized by all necessary corporate and similar action, (ii) do not (A) contravene such Loan Party's Constituent Documents, (B) violate any applicable Requirement of Law other than those that would not, in the aggregate, have a Material Adverse Effect, (C) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material Contractual Obligation of any Loan Party or any of its Subsidiaries (including other Related Documents or Loan Documents) other than those that would not, in the aggregate, have a Material Adverse Effect and are not created or caused by, or a conflict, breach, default or termination or acceleration event under, any Loan Document or (D) result in the imposition of any Lien (other than a Permitted Lien) upon any property of any Loan Party or any of its Subsidiaries and (iii) do not require any Permit of, or filing with, any Governmental Authority or any consent of, or notice to, any Person, other than (A) with respect to the Loan Documents, the filings required to perfect the Liens created by the Loan Documents, (B) those listed on Schedule 4.2 and that have been, or will be prior to the Closing Date, obtained or made, copies of which have been, or will be prior to the Closing Date, delivered to the Administrative Agent, and each of which on the Closing Date will be in full force and effect and (C) with respect to the Acquisition, those that, if not obtained, would not, in the aggregate, have a Material Adverse Effect.

(b)      Due Execution and Delivery. Upon entry of the Interim Order or the Final Order, as applicable, from and after its delivery to the Administrative Agent, each Loan Document has been duly executed and delivered to the other parties thereto by each Loan Party party thereto, is the legal, valid and binding obligation of such Loan Party and is enforceable against such Loan Party in accordance with its terms.

Section 4.3      Ownership of Group Members. Set forth on Schedule 4.3 is a complete and accurate list showing, as of the Closing Date, for each Group Member and each Subsidiary of any Group Member and each joint venture of any of them, its jurisdiction of organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower or Holdings. All outstanding Stock of each of them has been validly issued, is fully paid and non-assessable (to the extent applicable) and, except in the case of Holdings, is owned beneficially and of record by a Group Member (or, in the case of the Borrower, by Holdings) free and clear of all Liens other than the security interests created by the Loan Documents, security interests created by the Pre-Petition Loan Documents and non-consensual Permitted Liens, and, in the case of joint ventures, Permitted Liens. There are no Stock Equivalents with respect to the Stock of any Group Member (other than Holdings) or any Subsidiary of any Group Member or any joint venture of any of them and, as of the Closing Date, except as set forth on Schedule 4.3, there are no Stock Equivalents with respect to the Stock of Holdings. There are no Contractual Obligations or other understandings to which any Group Member, any Subsidiary of any Group Member or any joint venture of any of them is a party with respect to (including any restriction on) the issuance, voting, Sale or pledge of any Stock or Stock Equivalent of any Group Member or any such Subsidiary or joint venture.

Section 4.4      Initial Budget. The Initial Budget reflects projections for the 4-week period beginning on December [\_\_\_], 2011 on a weekly basis for such period [and provides

for disbursements for the first week period of the Initial Budget in amounts not to exceed the cash collateral budget for the corresponding period approved by the Bankruptcy Court prior to the Closing Date.] As of the Closing Date, the Initial Budget is based upon estimates and assumptions stated therein, all of which the Borrower believes to be reasonable and fair in light of conditions and facts known to the Borrower as of the Closing Date and reflect the good faith, reasonable and fair estimates by the Borrower of the future Consolidated financial performance of Holdings and the other information projected therein for the periods set forth therein.

Section 4.5 Material Adverse Effect. Since the Petition Date, there have been no events, circumstances, developments or other changes in facts that would, in the aggregate, have a Material Adverse Effect. In determining whether a Material Adverse Effect has occurred, it is understood that a Material Adverse Effect may occur at any time notwithstanding the fact that at such time no Default shall have occurred and be continuing. Furthermore, other than as disclosed in Schedule 4.5, no fact or circumstance is known to any Loan Party that, either alone or in conjunction with all other facts and circumstances, has had or reasonably could be expected in the future to have a Material Adverse Effect that has not been set forth in the financial statements.

Section 4.6 Insurance; No Defaults Under Post-Petition Material Agreements; Intercompany Loans. The properties of each Group Member are insured with financially sound and reputable insurance companies that are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where each such Group Member operates. No Group Member is in default under or with respect to any Material Post-Petition Contract. The Group Members have not extended and have not incurred any intercompany loans other than intercompany loans permitted under Section 8.1(d).

Section 4.7 Litigation. Other than the Cases, except as set forth on Schedule 4.7 hereof, there are no pending (or, to the knowledge of any Group Member, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes affecting any Group Member or its property that could reasonably be expected to affect the Obligations, the Loan Documents or the transactions contemplated hereby or have a Material Adverse Effect. There is no action, investigation, suit proceeding, audit, claim, demand, order or dispute pending (or, to the knowledge of any Group Member, threatened) affecting any Group Member before any court or arbitrator or any Governmental Authority which questions or challenges the validity of this Agreement or any Loan Document or any transaction contemplated herein or therein.

Section 4.8 Taxes. Except as set forth on Schedule 4.8 hereof and except as would not reasonably be expected, individually or in the aggregate, to result in liabilities exceeding \$500,000, all federal, state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. Except as set forth on Schedule 4.8 hereof and except as would not reasonably be expected, individually or in the aggregate, to result in liabilities exceeding \$500,000, (a) no Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any

Governmental Authority, (b) proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities and (c) no Tax Affiliate has participated in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b) or has been a member of an affiliated, combined or unitary group other than the group of which a Tax Affiliate is the common parent.

Section 4.9 Margin Regulations. The Borrower is not engaged in the business of extending credit for the purpose of, and no proceeds of any Loan or other extensions of credit hereunder will be used for the purpose of, buying or carrying margin stock (within the meaning of Regulation U of the Federal Reserve Board) or extending credit to others for the purpose of purchasing or carrying any such margin stock, in each case in contravention of Regulation T, U or X of the Federal Reserve Board.

Section 4.10 No Burdensome Obligations; No Material Post-Petition Defaults. No Group Member (and, to the knowledge of each Group Member, no other party thereto) is in default under or with respect to any Contractual Obligation of any Group Member, other than those defaults that (a) would not, in the aggregate, have a Material Adverse Effect, (b) existed on the Petition Date, (c) were occasioned by the filing of the Cases or (d) resulted from obligations with respect to which the Bankruptcy Code prohibits any Group Member from complying or permits any Group Member not to comply.

Section 4.11 Investment Company Act. No Group Member is an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for, an “investment company”, as such terms are defined in the Investment Company Act of 1940.

Section 4.12 Labor Matters. There are no strikes, work stoppages, slowdowns or lockouts existing, pending (or, to the knowledge of any Group Member, threatened) against or involving any Group Member, except, for those that would not, in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 4.12, as of the Closing Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Group Member, (b) no petition for certification or election of any such representative is existing or pending with respect to any employee of any Group Member and (c) no such representative has sought certification or recognition with respect to any employee of any Group Member.

Section 4.13 ERISA. Schedule 4.13 sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans and (c) all material Benefit Plans sponsored, maintained or contributed to by, or required to be contributed to by, any Group Member or with respect to which any Group Member has or could reasonably be expected to have liability, contingent or otherwise, under ERISA. Except for those that would not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law and each Benefit Plan (and each trust thereunder) intended to qualify for tax exempt status under Section 401 or 501 of the Code so qualifies, (y) there are no existing or pending (or to the knowledge of any Group Member, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Group Member incurs or otherwise has or could have an obligation or any Liability and (z) no ERISA Event is reasonably expected to occur. On the

Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. Neither any Group Member nor ERISA Affiliate has engaged in a “prohibited transaction,” as defined in Section 406 of ERISA or Section 4975 of the Code, in connection with any Benefit Plan, that could reasonably be expected to subject any Group Member to a material tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Code. No ERISA Affiliate would have any material Withdrawal Liability as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made.

Section 4.14 Environmental Matters. Except as set forth on Schedule 4.14, (a) the operations of each Group Member are and have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all Permits required by any applicable Environmental Law, other than non-compliances that, in the aggregate, could not have a reasonable likelihood of resulting in Material Environmental Liabilities, (b) no Group Member is party to, and no Group Member and no real property currently (or to the knowledge of any Group Member previously) owned, leased, subleased or operated by or for any Group Member is subject to or the subject of, any Contractual Obligation or any pending (or, to the knowledge of any Group Member, threatened) order, action, investigation, suit, proceeding, written claim, demand or notice of violation or of potential liability under or pursuant to any Environmental Law other than those that, in the aggregate, could not be reasonably expected to result in Material Environmental Liabilities, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any property of any Group Member and, to the knowledge of any Group Member, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property, (d) no Group Member has caused or suffered to occur a Release of Hazardous Materials at, to or from any real property of any Group Member and, to the knowledge of the Group Members after due inquiry, each such real property is free of any Hazardous Materials, except for such Release or Hazardous Materials that could not reasonably be expected to result, in the aggregate, in Material Environmental Liabilities, (e) no Group Member (i) is or has been engaged in, or has permitted any current or former tenant to engage in, operations, or (ii) knows of any facts, circumstances or conditions, including receipt of any information request or notice of potential responsibility under CERCLA or similar Environmental Laws, that, in the aggregate, would have a reasonable likelihood of resulting in Material Environmental Liabilities and (f) each Group Member has made available to the Administrative Agent and Avenue copies of all material existing environmental reports, reviews and audits and all other material documents pertaining to actual or potential Environmental Liabilities, in each case to the extent such reports, reviews, audits and documents are in their possession, custody or control.

Section 4.15 Intellectual Property. Each Group Member owns or licenses all Intellectual Property that is necessary for the operations of its businesses. To the knowledge of each Group Member, (a) the conduct and operations of the businesses of each Group Member does not infringe, misappropriate, dilute, violate or otherwise impair any Intellectual Property owned by any other Person and (b) no other Person has contested any right, title or interest of any Group Member in, or relating to, any Intellectual Property, other than, in each case, as could not reasonably be expected to affect the Loan Documents and the transactions contemplated therein and could not, in the aggregate, be reasonably expected to have a Material Adverse Effect. In addition, (x) there are no pending (or, to the knowledge of any Group Member, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes affecting any Group Member with respect to, (y) no judgment or order regarding any such claim has been rendered by

any competent Governmental Authority, no settlement agreement or similar Contractual Obligation has been entered into by any Group Member, with respect to and (z) no Group Member knows or has any reason to know of any valid basis for any claim based on, any such infringement, misappropriation, dilution, violation or impairment or contest, other than, in each case, as could not reasonably be expected to affect the Loan Documents and the transactions contemplated therein and could not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 4.16 Title: Real Property. (a) Each Group Member has good and marketable fee simple title to all owned real property and valid leasehold interests in all leased real property, and owns all material personal property, in each case that is purported to be owned or leased by it, including those reflected on the most recent Financial Statements delivered by the Borrower, and none of such property is subject to any Lien except Permitted Liens.

(b) Set forth on Schedule 4.16 is, as of the Closing Date, (i) a complete and accurate list of all real property (“Real Estate”) owned in fee simple by any Group Member or in which any Group Member owns a leasehold interest setting forth, for each such real property, the current street address (including, where applicable, county, state and other relevant jurisdictions), the record owner thereof and, where applicable, each lessee and sublessee thereof, (ii) any lease, sublease, license or sublicense of such real property by any Group Member and (iii) for each such real property that the Administrative Agent has requested be subject to a Mortgage or that is otherwise material to the business of any Group Member, each Contractual Obligation by any Group Member, whether contingent or otherwise, to Sell such real property.

Section 4.17 Full Disclosure. The information prepared or furnished by or on behalf of any Group Member in connection with any Loan Document (including the information contained in any Financial Statement or Disclosure Document, but excluding any projections and general economic or specific industry information developed by, and obtained from, third party sources) or any transaction contemplated therein, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances when made, not materially misleading; provided, however, that projections contained therein are not to be viewed as factual and that actual results during the periods covered thereby may differ from the results set forth in such projections by a material amount. All projections that are part of such information (including those set forth in the Budget, including as such Budget may be amended, modified or supplemented with the consent of the Administrative Agent and the Required Lenders subsequent to the Closing Date) are based upon good faith estimates and stated assumptions believed to be reasonable and fair as of the date made in light of conditions and facts then known and, as of such date, reflect good faith, reasonable and fair estimates of the information projected for the periods set forth therein. All facts known to any Group Member and material to an understanding of the financial condition, business, property or prospects of the Group Member taken as one enterprise have been disclosed to the Administrative Agent.

Section 4.18 Patriot Act. No Group Member (and, to the knowledge of each Group Member, no joint venture or subsidiary thereof) is in violation in any material respects of any United States Requirements of Law relating to terrorism, sanctions or money laundering (the “Anti-Terrorism Laws”), including the United States Executive Order No. 13224 on Terrorist Financing (the “Anti-Terrorism Order”) and the Patriot Act.

Section 4.19 Bankruptcy Representations; Commencement of the Cases. (a) The Cases were commenced in accordance with applicable Law and proper notice thereof of the

hearings for the approval of the Interim Order or the Final Order, as applicable, shall have been given. The Borrower has given, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or the Final Order, as applicable.

(b) Creation of Security Interest; Valid Liens. After giving effect to the Interim Order or the Final Order, the provisions of the Loan Documents and the Interim Order or the Final Order, as applicable, (i) are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, legal valid and perfected first priority Liens on and security interests in all rights, title and interests in the Collateral subject and subordinate only to the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order) and the Pre-Petition Senior Permitted Encumbrances and (ii) are enforceable against the Loan Parties.

(c) Obligations as Administrative Superpriority Expense Claims. Pursuant to clause (c)(1) of section 364 of the Bankruptcy Code and the Interim Order or the Final Order, as applicable, all Obligations hereunder and all other obligations of the Loan Parties under the Loan Documents (i) constitute allowed super-priority administrative expense claims in the Cases having priority over all administrative expense claims and unsecured claims of any kind whatsoever against the Loan Parties, whether now existing or hereafter arising, including all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise under section 364(c)(1) of the Bankruptcy Code, (ii) are senior to the rights of the Loan Parties and any successor trustee or estate representative in the Cases or any subsequent proceeding or case under the Bankruptcy Code and (iii) are subject as to priority and subordinate only to the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order) and the Pre-Petition Senior Permitted Encumbrances.

(d) Effectiveness of the Interim Order or the Final Order. The Interim Order or the Final Order, as applicable, (i) is in full force and effect and (ii) has not been reversed, stayed, vacated or subjected to a stay pending appeal or, without the prior written consent of the Administrative Agent and the Required Lenders in their respective sole discretion, modified or amended.

Section 4.20 Use of Proceeds. The proceeds of the Loans have been used solely in accordance with Section 7.9.

## ARTICLE V FINANCIAL COVENANTS

Each of Holdings and the Borrower (and, to the extent set forth in any other Loan Document, each other Loan Party) agrees with the Lenders and the Administrative Agent to the following, as long as any Obligation or any Commitment remains outstanding:

Section 5.1 Budget Covenants. Holdings and the Borrower shall not breach or fail to comply with any of the following:

(a) Cumulative Disbursement Covenant. The aggregate cumulative disbursements (excluding disbursements for debt service, Professional Fees and the professional

fees of the Administrative Agent, the other Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties) by the Loan Parties for the applicable Test Period in the Budget shall not be equal to an amount that is greater than 110% of the aggregate cumulative amount budgeted for such Test Period pursuant to the Budget.

(b) Minimum Sales Covenant. The aggregate cumulative sales by the Loan Parties for the applicable Test Period in the Budget shall not be equal to an amount that is less than 90% of the aggregate cumulative amount budgeted for such Test Period pursuant to the Budget.

(c) Covenant Test. The disbursement covenant set forth above shall, for the avoidance of doubt, permit any disbursement amounts that are included in the Budget for a specific period (the "Budgeted Period"), but that are not actually incurred or paid during such period, to be carried forward into the period during which such disbursements are actually incurred or paid (with a deemed corresponding reduction of such amount in the Budgeted Period on a dollar-for-dollar basis).

(d) Test Periods. Each of the covenants set forth above shall be tested on each Thursday of each calendar week during the term of the DIP Facilities (including, for the avoidance of doubt, any calendar week including the Petition Date through the Closing Date, as applicable) for the following trailing test periods (each, a "Test Period"): (i) with respect to the first calendar week of the four-week period of the then applicable Budget, the one-week period ending on the [Sunday] immediately prior to such test date, (ii) with respect to the second calendar week of the four-week period of the Budget then applicable, the two-week period ending on the [Sunday] immediately prior to such test date, (iii) with respect to the third calendar week of the four-week period of then applicable Budget, the three-week period ending on the [Sunday] immediately prior to such test date and (iv) with respect to the final calendar week of the four-week period of the then applicable Budget, the four-week period ending on the Sunday immediately prior to such test date.

## ARTICLE VI REPORTING COVENANTS

Each of Holdings and the Borrower (and, to the extent set forth in any other Loan Document, each other Loan Party) agrees with the Lenders and the Administrative Agent to each of the following, as long as any Obligation (other than contingent indemnification claims not then due and payable) or any Commitment remains outstanding:

Section 6.1 Financial Statements. The Borrower shall deliver to the Administrative Agent, for delivery to each Lender, each of the following:

(a) Quarterly Reports. As soon as available, and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year (or such later date that the Administrative Agent may agree in its sole discretion), the Consolidated and consolidating unaudited balance sheet of Holdings as of the close of such Fiscal Quarter and related Consolidated and consolidating statements of operations and cash flow for such Fiscal Quarter and that portion of the Fiscal Year ending as of the close of such Fiscal Quarter, setting forth in comparative form the figures for the corresponding period in the prior Fiscal Year and the figures contained in the latest Projections, in each case (other than with respect to the Projections) certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the Consolidated and consolidating financial position, results of operations and cash flow of Holdings as at the dates

indicated and for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(b) Annual Reports. As soon as available, and in any event within [120 days] after the end of each Fiscal Year, the Consolidated and consolidating balance sheet of Holdings as of the end of such year and related Consolidated and consolidating statements of operations, unitholders' equity and cash flow for such Fiscal Year, each prepared in accordance with GAAP, together with a certification (with respect to such Consolidated financial statements) by the Group Members' Accountants that (i) such Consolidated Financial Statements fairly present in all material respects the Consolidated financial position, results of operations and cash flow of Holdings as at the dates indicated and for the periods indicated therein in accordance with GAAP without qualification as to the scope of the audit and (ii) in the course of the regular audit of the businesses of the Group Members, which audit was conducted in accordance with the standards of the United States' Public Company Accounting Oversight Board (or any successor entity), such Group Members' Accountants have obtained no knowledge that a Default in respect of any financial covenant contained in Article V is continuing or, if in the opinion of the Group Members' Accountants such a Default is continuing, a statement as to the nature thereof (which certification may be limited to the extent required by customary applicable auditing rules or guidelines acceptable to the Administrative Agent).

(c) Monthly Reports. As soon as available, and in any event within 30 days after the end of each Fiscal Month (other than the third Fiscal Month of each Fiscal Quarter), (i) the Consolidated and consolidating unaudited balance sheet of Holdings as of the close of such Fiscal Month (and that portion of the Fiscal Year ending as of the close of such Fiscal Month) and (ii) the related Consolidated and consolidating income statement for such Fiscal Month (and that portion of the Fiscal Year ending as of the close of such Fiscal Month), in each case setting forth in comparative form the figures for the corresponding periods in the prior Fiscal Year and in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the Consolidated and consolidating financial position, results of operations and cash flow of Holdings as at the dates indicated and for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments). Together with such monthly reports delivered pursuant to this clause, the Borrower shall deliver a certificate, in form and substance satisfactory to the Administrative Agent, by a Responsible Officer of the Borrower that (i) the Corporate Chart attached thereto (or the last Corporate Chart delivered pursuant to this clause (c)) is correct and complete as of the date of such monthly report, (ii) the Loan Parties have delivered all documents (including updated schedules as to locations of Collateral and acquisition of Intellectual Property or real property) they are required to deliver pursuant to any Loan Document on or prior to the date of delivery of such monthly report and (iii) complete and correct copies of all documents modifying any term of any Constituent Document of any Group Member or any Subsidiary or joint venture thereof on or prior to the date of delivery of such monthly report have been delivered to the Administrative Agent or are attached to such certificate.

(d) Weekly Cash Flow Projections. (i) On each Thursday (or if such Thursday is not a Business Day, the following Business Day) following the Closing Date, an updated Weekly Cash Flow Projection and (ii) no later than noon on January 12, 2012 and every fourth Thursday at noon thereafter (commencing on the day immediately following the last day of the Budget then in effect), a proposed Budget for the immediately succeeding four-week period, in a form and substance reasonably acceptable to the Administrative Agent, the Required Lenders, the Pre-Petition Agent, the Pre-Petition Required Lenders and the lead counsel to the Committee and



approved by the Chief Restructuring Officer (each, a “Proposed Budget”). The Proposed Budget shall also be delivered to the Pre-Petition Agent, the Lenders hereunder and the Pre-Petition Lenders by the Borrower; provided that unless and until the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders have approved of such Proposed Budget, the Debtors shall still be subject to and be governed by the terms of the Budget then in effect and none of the Administrative Agent, Pre-Petition Agent, other Secured Parties and other Pre-Petition Secured Parties shall have any obligation to fund to or make disbursements pursuant to any Proposed Budget not constituting the approved Budget. The Administrative Agent, at the direction of the Required Lenders, shall have two (2) Business Days following receipt of each Proposed Budget to approve or reject such Proposed Budget upon written notice to the Borrower; provided that any portion of a Proposed Budget that relates to periods covered by a previously approved Proposed Budget shall automatically be deemed approved to the extent that no changes have been made to the Proposed Budget for such periods; provided, further, that, for the avoidance of doubt, the Borrower, the Administrative Agent and the Required Lenders may nonetheless mutually agree to modify line items in a Proposed Budget for weeks that have been previously approved by the Administrative Agent and Required Lenders. Upon receipt of a notice of rejection, the Borrower shall, within 24 hours of receipt of such notice, engage in good faith negotiations with the Administrative Agent and Required Lenders in order to develop a Proposed Budget that is acceptable to the Administrative Agent and Required Lenders in their respective sole discretion (such revised Proposed Budget to be submitted within two (2) Business Days of the Borrower’s receipt of a notice of rejection).

(e) Variance Report. On each Thursday (or if such Thursday is not a Business Day, the following Business Day) following the Closing Date, a Variance Report.

(f) Management Discussion and Analysis. Together with each delivery of the financial statements for each Fiscal Quarter or Fiscal Month required by clauses (b) or (c) above, a customary written management discussion and analysis (MD&A) of the financial condition and results of operations of the Group Members for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from [(i) the previous Fiscal Quarter or Fiscal Month, as applicable for such period, (ii) the figures for the corresponding period in the previous Fiscal Year and (iii) to the extent forecasts and projections have been delivered pursuant to Section 6.1(h), the figures for the corresponding period in such forecasts and projections, including written qualitative discussion and analysis by mill and by product line, in each case with detail satisfactory to the Administrative Agent.]

(g) Corporate Chart and Other Collateral Updates. In form and substance satisfactory to the Administrative Agent, a certificate by a Responsible Officer of the Borrower that (i) the Corporate Chart attached thereto (or the last Corporate Chart delivered pursuant to this clause (g)) is correct and complete as of the date of the Variance Report most recently required to be delivered pursuant to Section 6.1(e), (ii) the Loan Parties have delivered all documents (including updated schedules as to locations of Collateral and acquisition of Intellectual Property or real property) they are required to deliver pursuant to any Loan Document on or prior to the date of the Variance Report most recently required to be delivered pursuant to Section 6.1(e) and (iii) complete and correct copies of all documents modifying any term of any Constituent Document of any Group Member or any Subsidiary or joint venture thereof on or prior to the date of the Variance Report most recently required to be delivered pursuant to Section 6.1(e).

(h) Additional Projections. As soon as available and in any event not later than 45 days after the end of the 2011 Fiscal Year, (i) a revised annual business plan of the Group

Members for the 2012 Fiscal Year in form and substance acceptable to the Administrative Agent and the Required Lenders in their reasonable discretion and (ii) forecasts prepared by management of the Borrower for each Fiscal Quarter in such next succeeding Fiscal Year, including in such forecasts, (x) a projected year-end Consolidated and consolidating balance sheet, income statement and statement of cash flows, (y) a statement of all of the material assumptions on which such forecasts are based and (z) substantially the same type of financial information as that contained in financial projections provided by or on behalf of the Borrower to the Administrative Agent or the Pre-Petition Agent (in such capacities) prior to the Closing Date.

(i) Intercompany Loan Balances. Together with each delivery of any monthly financial reports pursuant to clause (c) above, a summary of the outstanding balances of all intercompany Indebtedness as of the last day of the Fiscal Month covered by such financial report, certified as complete and correct by a Responsible Officer of the Borrower.

(j) Mill Operating Reports. Within thirty (30) days after the end of each month (or the next succeeding Business Day if the thirtieth day is not a Business Day), an operating report for each of the Borrower's mills, detailing each mill's operating revenues, volumes and operating costs for such month and that portion of the Fiscal Year ending as of such month, in each case certified by a Responsible Officer of the Borrower as being complete and correct in all material respects and in each case with [(i) consolidated operating reports incorporating results from both newsprint operations and all other operations and (ii) separately prepared operating reports for (A) newsprint operations and (B) all other operations, in each case satisfactory to the Administrative Agent and Required Lenders in their sole discretion.]

(k) Sales Volume Reports. Within thirty (30) days after the end of each month (or the next succeeding Business Day if the thirtieth day is not a Business Day), a report showing the gross sales volumes for such month for the customers whose total sales volume since September 30, 2011 (and, to the extent such report is delivered after December 31, 2011, December 31, 2011) constitute the twenty largest customers of the Borrower since September 30, 2011 (and, to the extent such report is delivered after December 31, 2011, December 31, 2011) and setting forth in comparative form the figures for the prior month, as well as the corresponding month in the prior Fiscal Year, in each case with (i) consolidated volume reports with respect to sales from both newsprint operations and all other operations and (ii) separately-prepared reports with respect to (A) sales from newsprint operations and (B) sales from all other operations, in each case satisfactory to the Administrative Agent and Required Lenders in their sole discretion.

(l) Bankruptcy Court Filings. As soon as practicable in advance of filing with the Bankruptcy Court, (i) the motion seeking approval of and proposed forms of the Interim Order and the Final Order, which motion shall be in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, and which orders shall be in form and substance satisfactory to the Administrative Agent and Required Lenders in their respective sole discretion, (ii) the motions seeking approval of the Bidding Procedures and the 363 Sale, and proposed forms of the orders related thereto, (iii) all other proposed orders and pleadings related to the DIP Facilities, which orders and pleadings shall be in form and substance reasonably satisfactory to the Administrative Agent and Required Lenders, (iv) any plan of reorganization or liquidation, and/or any disclosure statement related to such plan (which plan or disclosure statement shall comply with the requirements set forth herein), (v) any motion and proposed form of order seeking to extend or otherwise modify the Debtors' exclusive periods set forth in section 1121 of the Bankruptcy Code, (vi) any motion seeking approval of any sale of the Debtors' assets in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders and any proposed

form of a bidding procedures order and sale order (each of which must be in form and substance satisfactory to the Administrative Agent and Required Lenders in their respective sole discretion) and (vii) any motion and proposed form of order filed with the Bankruptcy Court relating to any management equity plan, incentive plan or severance plan, the assumption, rejection, modification or amendment of any employment agreement, or the assumption, rejection, modification or amendment of any material contract (each of which must be in form and substance satisfactory to the Administrative Agent and the Required Lenders in their respective sole discretion).

(m) Chief Restructuring Officer Report. Not less often than on a weekly basis, a written report from the Chief Restructuring Officer in form and substance reasonably satisfactory to, and addressing such items as are reasonably requested by, the Administrative Agent and the Required Lenders and in any event addressing the marketing and sale process of the Debtors; provided that no such report shall be required to be delivered with respect to any week if, the Chief Restructuring Officer shall make himself available to participate in a meeting (whether in person or telephonically) with the Administrative Agent, the Lenders and Alvarez & Marsal Holdings, LLC, in lieu of providing such a written report; provided, further, that, upon the request of the Administrative Agent and the Required Lenders, the Chief Restructuring Officer shall make himself available to participate in a meeting (whether in person or telephonically) with the Administrative Agent, the Lenders and Alvarez & Marsal Holdings, LLC, in lieu of providing such a written report.

(n) Insurance. Together with each delivery of any Financial Statement for any Fiscal Month pursuant to clause (c) above, each in form and substance satisfactory to the Administrative Agent and certified as complete and correct by a Responsible Officer of the Borrower, a summary of all material insurance coverage maintained as of the date thereof by any Group Member, together with such other related documents and information as the Administrative Agent may reasonably require; provided, that in lieu of such summary, a Responsible Officer of the Borrower may certify that there have been no changes since the Closing Date or the end of the previous fiscal month, as applicable.

(o) EBITDA Bridge Reports. Together with each delivery of any monthly or quarterly financial reports pursuant to clauses (a) and (c) above, and within 30 days after the end of each Fiscal Year, a summary of all changes to Consolidated EBITDA, Consolidated net income under GAAP and such other financial indicators as the Administrative Agent or the Lenders may reasonably request, accompanied by a discussion by management of the Borrower as to the causes of such changes from the preceding month or preceding quarter, as applicable, in each case in such detail as the Administrative Agent or the Lenders may reasonably request.

(p) Borrowing Base Certificate and Collateral Reporting. (i) On or before the fourth Business Day of each week, a Borrowing Base Certificate as of the last day of the preceding week, accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent in its reasonable discretion; (ii) on or before the fourth Business Day of each two-week period, a summary of Inventory by location and type with a supporting perpetual Inventory report, in each case accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent in its reasonable discretion; (iii) on or before the fourth Business Day of each two-week period, a trial balance showing Accounts outstanding aged from invoice date as follows: 1 to 30 days, 31 to 60 days, 61 to 90 days and 91 days or more, accompanied by such supporting detail and documentation as shall be reasonably requested by the Administrative Agent in its reasonable discretion. To the extent any week does not have a fourth Business Day, the applicable report shall be due on the next succeeding Business Day. To the

extent reasonably available, the Borrower shall deliver also deliver all supporting documents associated with such Borrowing Base Certificates in searchable electronic formats reasonably acceptable to the Administrative Agent and the Required Lenders.

(q) Appraisals. Upon request of the Administrative Agent not more than two (2) times in any Fiscal Year or at any time after the occurrence and during the continuance of a Default or an Event of Default, appraisals of the Revolving Credit Priority Collateral (under and as defined in the Pre-Petition Credit Agreement), such appraisals to be conducted by an appraiser, and to be form and substance, reasonably satisfactory to the Administrative Agent and the Required Lenders, and in any event at the expense of the Borrower. To the extent reasonably available, the Borrower shall deliver also deliver all supporting documents associated with such appraisals in searchable electronic formats reasonably acceptable to the Administrative Agent and the Required Lenders.

(r) Daily Cash Reports. At the end of each Business Day, a written report from a Responsible Officer of the Borrower, no later than 5 p.m. on such day, certifying [(i) the current balances in each of the Controlled Deposit Accounts, the Controlled Securities Accounts and the Cash Collateral Account, (ii) aggregate cash disbursements made on such date, (iii) aggregate cash collections made on such date and (iv) that the Debtors have complied with the terms of Section 7.11.]

(s) Additional Reports. Such additional reports reasonably requested by the Administrative Agent or the Lenders, including with respect to litigation, contingent liabilities and ERISA Events and Environmental Liabilities.

Section 6.2 Other Events. The Borrower shall give the Administrative Agent, for delivery to each Lender, notice of each of the following (which may be made by telephone if promptly confirmed in writing) promptly after any Responsible Officer of any Group Member knows: (a)(i) any Default and (ii) any event that could reasonably be expected to have a Material Adverse Effect, specifying, in each case, the nature and anticipated effect thereof and any action proposed to be taken in connection therewith, (b) any event (other than any event involving loss or damage to property) reasonably expected to result in a mandatory payment of the Obligations pursuant to Section 2.8, stating the material terms and conditions of such transaction and estimating the Net Cash Proceeds thereof, (c) the commencement of, or any material developments in, any action, investigation, suit, proceeding, audit, claim, demand, order or dispute with, by or before any Governmental Authority affecting any Group Member or any property of any Group Member that (i) seeks injunctive or similar relief, (ii) in the reasonable judgment of the Borrower, exposes any Group Member to liability in an aggregate amount in excess of \$500,000 or (iii) if adversely determined could reasonably be expected to have a Material Adverse Effect, (d) the acquisition of any material real property or the entering into of any material lease and (e) any event, occurrence or circumstance in which a material portion of the Collateral is damaged, destroyed or otherwise impaired or adversely affected.

Section 6.3 Copies of Notices and Reports. The Borrower shall promptly deliver to the Administrative Agent, for delivery to each Lender, copies of each of the following: (a) all reports that Holdings transmits to its security holders generally, (b) all documents that any Group Member files with, or otherwise provides to, the Securities and Exchange Commission, the Financial Industry Regulatory Authority, any securities exchange or any Governmental Authority exercising similar functions, the Bankruptcy Court or any Committee (c) all press releases not made available directly to the general public and (d) any material document transmitted or received

pursuant to, or in connection with, any Contractual Obligation governing Indebtedness of any Group Member.

Section 6.4 Taxes. The Borrower shall give the Administrative Agent, for delivery to each Lender, notice of each of the following (which may be made by telephone if promptly confirmed in writing) promptly after any Responsible Officer of any Group Member knows of it: (a) the creation, or filing with the IRS or any other Governmental Authority, of any Contractual Obligation or other document extending, or having the effect of extending, the period for assessment or collection of any taxes with respect to any Tax Affiliate and (b) the creation of any Contractual Obligation of any Tax Affiliate, or the receipt of any request directed to any Tax Affiliate, to make any adjustment under Section 481(a) of the Code, by reason of a change in accounting method or otherwise, which, in either case, could reasonably be expected to have a Material Adverse Effect.

Section 6.5 Labor Matters. The Borrower shall give the Administrative Agent, for delivery to each Lender, notice of each of the following (which may be made by telephone if promptly confirmed in writing), promptly after, and in any event within 30 days after any Responsible Officer of any Group Member knows or has reason to know of it: (a) the commencement of any material labor dispute to which any Group Member is or may become a party, including any strikes, lockouts or other disputes relating to any of such Person's plants and other facilities and (b) the incurrence by any Group Member of any Worker Adjustment and Retraining Notification Act or related or similar liability incurred with respect to the closing of any plant or other facility of any such Person (other than, in the case of this clause (b), those that could not, in the aggregate, reasonably be expected to have a Material Adverse Effect).

Section 6.6 ERISA Matters. The Borrower shall give the Administrative Agent, for delivery to each Lender, (a) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, a copy of such notice, (b) promptly, and in any event within 10 days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto and (c) promptly, and in any event within 10 days, after any Responsible Officer of the Borrower or any ERISA Affiliate knows or has reason to know of any ERISA Event, a statement of a Financial Officer of the Borrower setting forth details as to such ERISA Event, the action, if any, that the Borrower or the ERISA Affiliate proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto.

Section 6.7 Environmental Matters. (a) The Borrower shall provide the Administrative Agent, for delivery to each Lender, notice of each of the following (which may be made by telephone if promptly confirmed by the Borrower in writing) promptly after any Responsible Officer, environmental manager or plant manager of any Group Member knows or has reason to know of it (and, upon reasonable request of the Administrative Agent, material documents and information in connection therewith): (i)(A) Releases that are either not permitted or that do not required Remedial Action pursuant to any Environmental Law, (B) the receipt by any Group Member of any notice of violation of or potential Liability or similar notice under, or the existence of any condition that could reasonably be expected to result in violations of or Liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action,

investigation, suit, proceeding, audit, claim or demand alleging a violation of or Liability under any Environmental Law or otherwise related to the presence or Release of, or exposure to, any Hazardous Materials, that, for each of clauses (A), (B) and (C) above (and, in the case of clause (C), if adversely determined), in the aggregate for each such clause, could reasonably be expected to result in, or otherwise cause the Borrower to incur, any Material Environmental Liabilities, (ii) the receipt by any Group Member of notification that any property of any Group Member is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iii) any actual or proposed acquisition or lease of any assets or real property if such acquisition or lease could have a reasonable likelihood of resulting in, or otherwise causing the Borrower to incur, any Material Environmental Liabilities.

(b) Promptly upon reasonable request of the Administrative Agent, the Borrower shall provide the Administrative Agent, for delivery to each Lender, a written environmental assessment report prepared at the expense of the Borrower by an environmental consulting firm and, in the form and substance, reasonably acceptable to the Administrative Agent and the Required Lenders (i) containing an update as to the status of any environmental, health or safety compliance, hazard or Liability issue identified in any document delivered to any Secured Party pursuant to any Loan Document, (ii) regarding any matter for which notice was provided or otherwise required pursuant to Section 6.7(a), or (iii) as to any other condition or matter reasonably believed by the Administrative Agent to result in, or otherwise causing the Borrower to incur, any Material Environmental Liabilities. Such report shall provide the estimated cost to perform any Remedial Action that may be required pursuant to Environmental Law or to cure any Material Environmental Liability and, if reasonably requested by the Administrative Agent or Required Lenders, shall include any soil and/or groundwater sampling to investigate the presence or absence of Hazardous Materials reasonably necessary to provide such estimate.

Section 6.8 Other Information. The Borrower shall provide the Administrative Agent, for delivery to each Lender, with such other documents and information with respect to the business, property, condition (financial or otherwise), legal, financial or corporate or similar affairs or operations of any Group Member as the Administrative Agent or any Lender through the Administrative Agent may from time to time reasonably request

Section 6.9 Lender Calls. The Borrower, Holdings, their officers (including, the Chief Restructuring Officer and chief financial officer of the Borrower) and their advisors (including any investment banker retained by any Debtor) shall make themselves available for conference calls to be held on a weekly basis (or more frequently as the Administrative Agent or Avenue may reasonably request) with the Administrative Agent and/or the other Secured Parties to discuss the Budget (and all updates and Variance Reports related thereto), the sales and marketing process related to the 363 Sale or any other issues as may be reasonably requested by the Administrative Agent and/or the other Secured Parties, and such conference calls may be held without the participation of the Loan Parties or any other representative or advisor of the Loan Parties.

## ARTICLE VII AFFIRMATIVE COVENANTS

Each of Holdings and the Borrower (and, to the extent set forth in any other Loan Document, each other Loan Party) agrees with the Lenders and the Administrative Agent to each of the following, as long as any Obligation (other than contingent indemnification claims not yet due and payable) or any Commitment remains outstanding:

Section 7.1 Maintenance of Corporate Existence. Each Group Member shall (a) preserve and maintain its legal existence, except in the consummation of transactions expressly permitted by Sections 8.4 and 8.7, and (b) preserve and maintain its rights (charter and statutory), privileges, franchises and Permits necessary or desirable in the conduct of its business, except, in the case of this clause (b), where the failure to do so could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.2 Compliance with Laws, Etc. Each Group Member shall comply with all applicable Requirements of Law, Contractual Obligations and Permits, except for such failures to comply that could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.3 Payment of Obligations. Each Group Member shall pay or discharge before they become delinquent (a) all material claims, taxes, assessments, charges and levies imposed by any Governmental Authority on a date following the Petition Date, (b) all other lawful claims that if unpaid would, by the operation of applicable Requirements of Law, become a Lien upon any property of any Group Member, except, in each case, for those whose amount or validity is being contested in good faith by proper proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Group Member in accordance with GAAP and (c) all obligations set forth for payment in the Budget.

Section 7.4 Maintenance of Property. Each Group Member shall maintain and preserve (a) in good working order and condition all of its property necessary in the conduct of its business and (b) all rights, permits, licenses, approvals and privileges (including all Permits) necessary, used or useful, whether because of its ownership, lease, sublease or other operation or occupation of property or other conduct of its business, and shall make all necessary or appropriate filings with, and give all required notices to, Government Authorities, except for such failures to maintain and preserve the items set forth in clauses (a) and (b) above that could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.5 Maintenance of Insurance. Each Group Member shall (a) maintain or cause to be maintained in full force and effect all policies of insurance of any kind with respect to the property and businesses of the Group Members (including policies of life, fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation, business interruption and employee health and welfare insurance) with financially sound and reputable insurance companies or associations (in each case that are not Affiliates of the Borrower) of a nature and providing such coverage as is sufficient and as is customarily carried by businesses of the size and character of the business of the Group Members and (b) cause all such insurance relating to any property or business of any Loan Party to name the Administrative Agent on behalf of the Secured Parties as additional insured or loss payee, as appropriate, and to provide that no cancellation, material addition in amount or material change in coverage shall be effective until after 30 days notice thereof to the Administrative Agent.

Section 7.6 Keeping of Books. The Group Members shall keep proper books of record and account, in which full, true and correct entries shall be made in accordance with GAAP and all other applicable Requirements of Law of all financial transactions and the assets and business of each Group Member.

Section 7.7 Access to Books and Property. Each Group Member and, Brant Industries, Inc. (and any of its subsidiaries) shall, and in the case of (y) and (z) below, shall cause

their respective representatives to, (x) maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Debtors, (y) reasonably cooperate, consult with and provide to the Administrative Agent, the Pre-Petition Agent and Avenue, and any Related Person of any of them (in each case coordinated through the Administrative Agent) all such information as may be required to be delivered hereunder or in the Interim Order, (z) permit (and shall cause its representatives to permit) (a) so long as no Event of Default then exists, the Administrative Agent and any Related Person of the Administrative Agent and Avenue and (b) during the continuance of an Event of Default, the Administrative Agent, the Lenders, or any Related Person of any of them, at reasonable times during normal business hours and with reasonable advance notice (except that, during the continuance of an Event of Default, no such notice shall be required) (i) to visit and inspect the property of each Group Member and examine and make copies of and abstracts from, the corporate (and similar), financial, operating and other books and records of each Group Member, to (x) perform such field examinations, verifications and evaluations of the Collateral as the Administrative Agent may deem necessary or appropriate in its sole discretion and (y) conduct a collateral audit and analysis of their respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss and provide advice with respect to each of the Debtors' affairs, finances, properties, business operations and accounts with their respective officers (including Brant Industries, Inc. and the Chief Restructuring Officer, as defined below), employees and independent registered certified public accountants as and to the extent required by the DIP Loan Documents, (ii) to discuss the affairs, finances and accounts of each Group Member with any officer or director of any Group Member, including permitting the Administrative Agent and the Pre-Petition Agent and their respective representatives and advisors (in each case coordinated through the Administrative Agent) to consult and have regularly scheduled meetings with the Debtors' senior management (including Brant Industries, Inc. and the Chief Restructuring Officer) and advisors on matters concerning the Debtors' businesses, financial condition, strategic planning, cash and liquidity management, restructuring activities, progress with respect to any sale of assets pursuant to section 363 of the Bankruptcy Code, operations or any other aspect of the Cases, (iii) to communicate directly with any registered certified public accountants (including the Group Members' Accountants) of any Group Member and (iv) subject to the confidentiality provisions of the Loan Documents, to provide all data, documents, reports or other information about or related to the Debtors (whether or not deemed confidential or proprietary), including all reports or other documents relating to any Environmental Liability of the Debtors as reasonably requested by the Administrative Agent, Avenue or the Pre-Petition Agent and their respective representatives and advisors (in each case coordinated through the Administrative Agent) in connection with each party's due diligence process in pursuing a credit bid. Each Group Member shall authorize their respective registered certified public accountants (including the Group Members' Accountants) to communicate directly with the Administrative Agent, the Lenders and their Related Persons, as applicable, and to disclose to the Administrative Agent, the Lenders and their Related Persons, as applicable, all financial statements and other documents and information as they might have and the Administrative Agent reasonably requests with respect to any Group Member; provided that officers of Borrower shall have the right to be present at such meetings. In addition, each Group Member shall provide full and direct access to information (including historical information) and personnel as the Administrative Agent and the Lenders may reasonably request from time to time, including regularly scheduled meetings among senior management, the Chief Restructuring Officer, company advisors and the Administrative Agent, Alvarez & Marsal North America, LLC and such other consultants to the Administrative Agent and/or the Lenders as may be identified in such Person to the Borrower, and Alvarez & Marsal North America, LLC shall be provided with access to all information it shall



reasonably request and to other internal meetings regarding strategic planning, cash and liquidity management, operation and restructuring activities, progress with respect to the 363 Sale and any other aspect of the Cases. All access rights of the Administrative Agent, the Pre-Petition Agent, Avenue or any other Lender under this Section 7.7 shall extend to any of their respective Related Persons including, without limitation, their respective affiliates, representatives, agents, counsel, advisors, accountants, appraisers, consultants, independent contractors or other designees.

Section 7.8 Environmental. Each Group Member shall comply with, and maintain its real property, whether owned, leased, subleased or otherwise operated, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Action necessary to achieve such compliance or that is required by orders and directives of any Governmental Authority) except for failures to comply that would not, in the aggregate, have a Material Adverse Effect. Without limiting the foregoing, if an Event of Default is continuing or if the Administrative Agent at any time has a reasonable basis to believe that there exist violations of Environmental Laws by any Group Member or that there exist any Environmental Liabilities, in each case, that would have, in the aggregate, a Material Adverse Effect, then each Group Member shall, as soon as practicable following receipt of a written request from the Administrative Agent setting forth the basis for the request, cause the performance of such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as the Administrative Agent may from time to time reasonably request to evaluate any such Event of Default, violation of Environmental Laws or Environmental Liabilities; provided, that, no sampling of soil and groundwater shall be conducted with respect to the real property at the Newberg Oregon Mill unless Borrower determines that such sampling would not adversely affect and would comply with the terms of the indemnity provided for in Section 9.8 of the Acquisition Agreement, and will be conducted in compliance with the terms and conditions of such indemnity. Such audits, assessments and reports shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to the Administrative Agent and Avenue, the results thereof shall be promptly provided to the Administrative Agent and Avenue, including any testing and sampling, and shall be in form and substance reasonably acceptable to the Administrative Agent and Avenue.

If any Group Member fails to conduct any such assessment or audit as soon as practicable following a proper request by the Administrative Agent, the Administrative Agent may conduct the assessment or audit and shall be provided access to the real property involved during normal business hours under the general supervision of a Group Member's personnel as is reasonably necessary to perform such work; provided that the Administrative Agent and its Related Persons provide reasonable notice of any such actions to each Group Member and carry out any such work in a manner that does not unreasonably interfere with or adversely affect the operations or assets of any Group Member. The Administrative Agent and its Related Persons shall provide each Group Member the opportunity to observe any testing or sampling conducted by them and to obtain split samples, and promptly provide the results of their work, including any testing and sampling, to each Group Member. The Administrative Agent and its Related Persons shall treat the conduct and results of any such work as confidential, and shall not disclose the existence of any such work or its results to any third party without the prior written consent of each Group Member, except as required by law.

Section 7.9 Use of Proceeds. The proceeds of the Loans shall be used by the Borrower (and, to the extent distributed to them by the Borrower, each other Group Member) solely for (a) payment of disbursements to the extent set forth in the Budget (and subject to the variance

provisions set forth in Section 5.1(a) hereof) and (b) payment of such other obligations incurred before the Petition Date as are consented to by the Administrative Agent and the Required Lenders in their respective sole discretion and approved of by the Bankruptcy Court. No proceeds of any Loans or any Collateral may be used (i) for the payment of fees and expenses of any Person incurred challenging, or in relation to the challenge of, (A) the Liens or claims of any or all of the Secured Parties, or the initiation or prosecution of any claim or cause of action against any or all of the Secured Parties, including any Avoidance Actions or (B) any claims or causes of actions (including any Avoidance Actions) against any or all of the Pre-Petition Secured Parties, their respective advisors, agents and sub-agents, including formal discovery proceedings in anticipation thereof, and/or challenging any lien or claim of any or all of the Pre-Petition Secured Parties, or asserting any other lender liability or other claim or cause of action against any of the Pre-Petition Secured Parties or (ii) in connection with preventing, hindering or delaying the Lenders', the Administrative Agent's, the Pre-Petition Secured Parties' from exercising any default-related right and remedy (including any enforcement or realization upon the Collateral or Pre-Petition Collateral) once an Event of Default has occurred and is continuing under the Loan Documents, the "Loan Documents" under and as defined in the Pre-Petition Credit Agreement or the Interim Order or Final Order, as applicable,. The foregoing notwithstanding, proceeds of Loans in an aggregate amount not to exceed, when aggregated with such amounts set forth in the Budget, the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order), any cash collateral or other Collateral proceeds, \$50,000 may be used by the Committee, or any representative of the estates, to investigate, but not prosecute or prepare to prosecute any challenge to, the claims and/or liens of the Pre-Petition Secured Parties.

Section 7.10 Additional Collateral and Guaranties. To the extent not delivered to the Administrative Agent on or before the Closing Date (including in respect of after-acquired property and Persons that become Subsidiaries of any Loan Party after the Closing Date), each Group Member shall, promptly, do each of the following, unless otherwise agreed by the Administrative Agent:

(a) deliver to the Administrative Agent such modifications to the terms of the Loan Documents (or, to the extent applicable as determined by the Administrative Agent, such other documents), in each case in form and substance reasonably satisfactory to the Administrative Agent and as the Administrative Agent deems necessary or advisable in order to ensure the following:

(i) (A) each Subsidiary of any Loan Party that has entered into Guaranty Obligations with respect to any Indebtedness of the Borrower and (B) each Wholly Owned Subsidiary of any Loan Party shall guaranty, as primary obligor and not as surety, the payment of the Obligations of the Borrower; and

(ii) each Loan Party (including any Person required to become a Guarantor pursuant to clause (i) above) shall effectively grant to the Administrative Agent, for the benefit of the Secured Parties, a valid and enforceable security interest in all of its property, including all of its Stock and Stock Equivalents and other Securities (in each case, other than any Excluded Equity and any Excluded Property (in each case under and as defined in the Guaranty and Security Agreement)), as security for the Obligations of such Loan Party;

provided, however, that, unless the Borrower and the Administrative Agent otherwise agree, in no event shall (x) any Excluded Foreign Subsidiary be required to guaranty the payment of any

Obligation, (y) the Loan Parties, individually or collectively, be required to pledge in excess of 65% of the outstanding Voting Stock of any Excluded Foreign Subsidiary or (z) a security interest be required to be granted on any property of any Excluded Foreign Subsidiary as security for any Obligation;

(b) deliver to the Administrative Agent all documents representing all Stock, Stock Equivalents and other Securities pledged pursuant to the documents delivered pursuant to clause (a) above, together with undated powers or endorsements duly executed in blank;

(c) [Reserved];

(d) to take all other actions necessary or advisable to ensure the validity or continuing validity of any guaranty for any Obligation or any Lien securing any Obligation, to perfect, maintain, evidence or enforce any Lien securing any Obligation or to ensure such Liens have the same priority as that of the Liens on similar Collateral set forth in the Loan Documents executed on the Closing Date, including the filing of UCC financing statements in such jurisdictions as may be required by the Loan Documents or applicable Requirements of Law or as the Administrative Agent may otherwise reasonably request; and

(e) deliver to the Administrative Agent legal opinions relating to the matters described in this Section 7.10, which opinions shall be as reasonably required by, and in form and substance and from counsel reasonably satisfactory to, the Administrative Agent.

Section 7.11 Deposit Accounts; Securities Accounts and Cash Collateral Accounts. (a) Each Group Member (other than Excluded Foreign Subsidiaries) shall (i) ensure that all payments made to it are made directly to deposit accounts that are Controlled Deposit Accounts, (ii) deposit any cash that it otherwise has or receives from time to time into such Controlled Deposit Accounts and (iii) deposit all of its Cash Equivalents in securities accounts that are Controlled Securities Accounts. The Administrative Agent shall have full cash dominion with respect to the Controlled Deposit Accounts pursuant to the Control Agreements governing such accounts.

(b) The Administrative Agent shall not have any responsibility for, or bear any risk of loss of, any investment or income of any funds in any Cash Collateral Account. From time to time after funds are deposited in any Cash Collateral Account, the Administrative Agent may apply funds then held in such Cash Collateral Account to the payment of Obligations in accordance with Section 2.12. To the extent an Event of Default shall have occurred and is continuing, no Group Member and no Person claiming on behalf of or through any Group Member shall have any right to demand payment of any funds held in any Cash Collateral Account at any time prior to (i) the cure or waiver of such Event of Default or (ii) the termination of all Commitments and the payment in full of all Obligations.

(c) Subject to the provisions of Sections 2.12 and 9 of this Credit Agreement and Paragraph 18 of the Interim Order, upon the direction of the Administrative Agent and the Required Lenders, at any time upon the occurrence or during the continuation of an Event of Default, all funds in the Cash Collateral Account, the Controlled Deposit Accounts and the Controlled Securities Account shall be remitted immediately first, to the Administrative Agent for application to the Obligations until indefeasible payment in full in cash of each of the Obligations in accordance with Section 2.12(a)(ii) and second to the Pre-Petition Agent for application to the Pre-Petition Credit Obligations under, and in accordance with the provisions of the Pre-Petition

Credit Documents until indefeasible payment in full in cash of the Pre-Petition Credit Obligations, and the Administrative Agent or the Pre-Petition Agent, as applicable, shall be authorized to take all action as necessary or appropriate to effectuate the foregoing.

(d) No later than at the end of each Business Day, each Controlled Deposit Account shall be swept into, and all amounts contained in such accounts shall be credited to, the Cash Collateral Account. After giving effect to the sweep in the preceding sentence, each Group Member shall ensure that the aggregate balances in the Cash Collateral Account and any Controlled Deposit Accounts, in each case measured on a cash basis, and the value of any securities entitlements credited to any Controlled Securities Accounts shall not, in the aggregate, exceed \$5,000,000 at any time. Each Group Member shall ensure that all securities entitlements credited to such Controlled Securities Accounts shall be Cash Equivalents.

Section 7.12 Landlords' Agreements, Mortgagee Agreements; Bailee Letters and Real Estate Purchases. Each Group Member shall use commercially reasonable efforts to obtain a landlord's agreement, mortgagee agreement or bailee letter, as applicable, from the lessor of each leased property, mortgagee of owned property or bailee with respect to any warehouse, processor or converter facility or other location where Collateral having a value of greater than \$100,000 is stored or located, which agreement or letter shall contain a waiver or subordination of all Liens or claims that the landlord, mortgagee or bailee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to Administrative Agent. With respect to such locations or warehouse space leased or owned as of the Closing Date and thereafter, if the Administrative Agent has not received a landlord or mortgagee agreement or bailee letter within 60 days of the Closing Date (or, if later, as of the date such location is acquired or leased), the Borrower's and/or each Guarantor's Eligible Inventory at that location shall, in Administrative Agent's reasonable credit judgment, be excluded from the Borrowing Base. After the Closing Date, no Inventory shall be shipped to a processor or converter under arrangements established after the Closing Date without the prior written consent of Administrative Agent (which consent, in Administrative Agent's discretion, may be conditioned upon the exclusion from the Borrowing Base of Eligible Inventory at that location) or, unless and until a satisfactory bailee letter shall first have been obtained with respect to such location. Each Group Member shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

Section 7.13 Compliance with Milestones. The Debtors shall be required to comply with the following milestones (the "Milestones"):

(a) On or before the earlier of (A) the Initial Deadline or (B) the fifth business day after (i) the Pre-Petition Agent, on behalf of the Pre-Petition Secured Parties, provides to the Debtors a 363 Asset Purchase Agreement, or (ii) the Third-Party Asset Purchase Agreement (such 363 Asset Purchase Agreement or Third-Party Asset Purchase Agreement shall provide for the assumption or payment of the claims set forth in clauses(w), (x), (y) and (z) in the definition of the 363 Asset Purchase Agreement), the Debtors shall file and properly serve (i) the Sale Procedures Motion seeking approval of the Sale Procedures Order and (ii) an executed copy of the 363 Asset Purchase Agreement or such other asset purchase agreement with a third-party, which other asset purchase agreement and which third party shall be acceptable to the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Required Pre-Petition Lenders in their respective sole discretion.

(b) On or before the date that is ten (10) days after the Initial Deadline, or such later date to which the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their respective sole discretion, the Bankruptcy Court shall have held a hearing on the Sale Procedures Motion.

(c) On or before the date that is fifteen (15) days after the Initial Deadline, or such later date to which the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their respective sole discretion, the Bankruptcy Court shall have entered the Sale Procedures Order.

(d) On or before the date that is forty-five (45) days after the Initial Deadline, or such later date to which the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their respective sole discretion, the Debtors shall have held the Auction in accordance with the provisions set forth in the Sale Procedures Order.

(e) Unless the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders otherwise shall have otherwise provided their prior written consent in their respective sole discretion, on or before the date that is forty-seven (47) days after the Initial Deadline, the Bankruptcy Court shall have entered the Sale Order approving the 363 Sale, the results of the Auction and the winning bid received at the Auction.

(f) Unless the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders agree otherwise in their respective sole discretion, on or before the date that is (x) fifty-one (51) days after the Initial Deadline, if a waiver of the stay set forth in Bankruptcy Rule 6004 is obtained, or (y) sixty-five (65) days after the Initial Deadline, if such a waiver is not obtained, the Debtors shall have consummated the 363 Sale, pursuant to the 363 Asset Purchase Agreement or pursuant to the Third-Party 363 Asset Purchase Agreement with the Winning Bidder; provided, that the bid set forth by the Winning Bidder in the Third-Party 363 Asset Purchase Agreement shall be acceptable to the Administrative Agent and Required Lenders in their respective sole discretion;

*Provided, that* notwithstanding anything to the contrary herein, the Bankruptcy Court may set dates with respect to the Milestones beyond the outer date specified in this Section 7.13 to accommodate its own schedule and to the extent the Bankruptcy Court makes such an extension, the Milestones hereunder shall be automatically extended by the same period as the Bankruptcy Court's extension.

Nothing herein shall limit the right of the Committee to object to the Sale Procedures Motion or to any motion for approval of the 363 Asset Purchase Agreement or Third-Party 363 Asset Purchase Agreement, including, without limitation, any objection concerning the sale process timeline set forth in the Sale Procedures Motion.

Section 7.14 Opposition to Certain Motions. Each Loan Party shall promptly and diligently oppose all motions filed by Persons in the Bankruptcy Court to lift the stay on the Collateral (other than motions filed by the Administrative Agent and the Required Lenders relating to the DIP Facilities), all motions filed by Persons in the Bankruptcy Court to terminate the exclusive ability of the Debtors to file a plan of reorganization, and all other motions filed by Persons in the Bankruptcy Court that, if granted, could reasonably be expected to have a material adverse effect on the Administrative Agent or any Lender or any Collateral.

Section 7.15 Entry of Final Order. The Loan Parties shall ensure that the Final Order shall have been entered by the Bankruptcy Court not later than 30 days following the entry of the Interim Order.

Section 7.16 Cooperation. The Debtors agree to, and agree to cause the Brant Parties providing services to the Debtors and the representatives and advisors of each of the foregoing to, cooperate in good faith, and not interfere with the Chief Restructuring Officer, the Administrative Agent, the other Secured Parties, the Pre-Petition Agent, and the other Pre-Petition Secured Parties, and each of their respective representatives and advisors, to effectuate the transactions contemplated by the Interim Order or Final Order, as applicable, this Agreement and the other Loan Documents, including cooperating in good faith with respect to the 363 Sale process (including the consummation of a 363 Sale), any actual or potential Credit Bid by the Administrative Agent or the Pre-Petition Agent, the consummation of the 363 Sale and the engagement and retention of the Chief Restructuring Officer. In connection with the 363 Sale, upon reasonable request of the Administrative Agent, the Pre-Petition Agent or Avenue, the Debtors shall promptly retain (at Debtors' expense, which expense shall be deemed part of the Budget and the Obligations shall be increased in accordance therewith) one or more consulting firms reasonably acceptable to the Administrative Agent, Avenue and Pre-Petition Agent to prepare, and upon receipt, shall promptly provide the Administrative Agent, Avenue and Pre-Pre-Petition Agent copies of, written assessments and consultant reports (with copies of any such assessments or reports to be provided to any qualified bidders during the 363 Sale process and the Committee) (i) containing an update as to the status of any liability issue identified in any document delivered to, or any liability issue identified by, the Administrative Agent, the other Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties in connection with the Loan Documents and the Pre-Petition Credit Documents, or (ii) as to any other condition or matter reasonably believed by the Administrative Agent, the Pre-Petition Agent or Avenue to result in, or otherwise cause the Debtors to incur, any material liabilities. Such report shall provide the estimated cost to perform any remedial action that may be required to cure such liabilities and, if reasonably requested by Administrative Agent, the Pre-Petition Agent and/or Avenue, shall include such further diligence information with respect to the Debtors as may be reasonably necessary to provide such estimate. Without limiting the foregoing, as promptly as practicable after any request by the Administrative Agent, Avenue, the Pre-Petition Agent or the Chief Restructuring Officer, the Debtors shall provide, and shall cause the Brant Parties providing services to the Debtors and the representatives and advisors of each of the foregoing to provide, such additional information, reports, consultant's reports (including environmental reports), diligence materials, any valuation, financial and operational data (including customer specific information) and other documents and information as may be reasonably necessary or desirable in connection with any proposed Credit Bid by the Pre-Petition Agent or the Administrative Agent or in connection with the Chief Restructuring Officer's performance of its duties.

Section 7.17 Chief Restructuring Officer. The Borrower shall, at all times, have the Chief Restructuring Officer engaged pursuant to the CRO Order (or such other engagement letter satisfactory to the Administrative Agent and the Required Lenders in their respective sole discretion). In accordance with the CRO Order, which shall be deemed to be amended by the Interim Order, the Chief Restructuring Officer shall (a) have direct and complete access to the Debtors' managers, officers, advisors, employees and other representatives, and with respect to all matters relating to the Borrower, to Brant Industries, Inc.'s managers, officers, advisors, employees and other representatives, and shall at all times be entitled to take all action necessary or appropriate to be fully informed with respect to the Debtors' financial condition, operations,

customers and business prospects including direct and complete access to the Brant Parties providing services to the Debtors and the representatives and advisors of each of the foregoing in Greenwich, Connecticut and their books and records relating to the Debtors, and the right and option to communicate with the Debtors' customers, (b) oversee the 363 Sale on behalf of the Debtors, including all activities of any investment banker retained by the Debtors, (c) respond to all reasonable information requests or inquiries of the Administrative Agent, the Pre-Petition Agent and Avenue and their respective representatives concerning any and all matters relating to the activities of such Chief Restructuring Officer including communications outside the presence of any representatives of the Debtors (other than attorneys, where applicable) or Brant Industries, Inc., and (d) provide the Administrative Agent, the Pre-Petition Agent and Avenue and their respective representatives, upon reasonable request, copies of all reports, analyses, materials provided by such Chief Restructuring Officer to the Debtors. In addition to the foregoing, (i) any disbursement to be made by the Debtors in excess of \$75,000 in accordance with the Budget shall require the prior approval of the Chief Restructuring Officer, (ii) the Chief Restructuring Officer shall have approval rights with respect to (w) any decision or action by the Debtors or Brant Industries, Inc. relating to any allocation or servicing of business as and between the Debtors, on the one hand, and White Birch on the other hand from existing customers of the Debtors (that is not consistent in all material respects with historical practice with respect to such customers), (x) any material action that is taken by the Debtors or Brant Industries, Inc. that is outside the ordinary course of business, including without limitation, the shutting down of any product lines, businesses or plants, (y) any material transactions between the Debtors on one hand, and the Brant Parties on the other hand and (z) sales of inventory outside of the ordinary course of business or otherwise on non-market terms, (iii) Brant Industries, Inc. and the Debtors shall provide reasonable advance notice to, and shall consult with, the Chief Restructuring Officer before making any decision concerning the allocation or servicing of business as between the Debtors, on the one hand, and White Birch, on the other hand, from new customers and (iv) the Chief Restructuring Officer shall be entitled to investigate or otherwise evaluate the basis for any decision or action by Brant Industries, Inc. or the Debtors over which, prior to the entry of the CRO Order, the Chief Restructuring Officer has approval or consultation rights pursuant to the preceding clauses (ii) and (iii), and the Brant Parties providing services to the Debtors and the representatives and advisors of each of the foregoing shall fully cooperate with any such investigation or evaluation and shall provide the Chief Restructuring Officer with full and complete access to the books and records of Brant Industries, Inc. with respect to any such investigation or evaluation. The terms of each of the CRO Order shall further provide that all fees and expenses incurred by the Debtors in connection with the engagement and retention of the Chief Restructuring Officer shall be paid by the Debtors and that the Debtors, the Chief Restructuring Officer shall each further agree that such Chief Restructuring Officer shall be an independent contractor employed by the Debtors and shall at no time be deemed an employee, agent or independent contractor of the Administrative Agent, the other Secured Parties, the Pre-Petition Agent or the other Pre-Petition Secured Parties. The Debtors further agree that the Administrative Agent, the other Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties shall have no liability for any actions or omissions of the Chief Restructuring Officer.

Section 7.18 Further Assurances. At any time or from time to time upon the request of the Administrative Agent or the Required Lenders, at the expense of the Loan Parties, promptly execute, acknowledge and deliver such further documents and do such other acts and things as the Administrative Agent or the Required Lenders may reasonably request in order to effect fully the purposes of the Loan Documents or to more fully perfect or renew the rights of the Administrative Agent or the Lenders with respect to the Collateral.

Section 7.19 Investment Banker. At all times prior to the Termination Date, the Borrower shall retain an investment banker reasonably acceptable to the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders in their respective sole discretion and on monetary terms and conditions acceptable to the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders in their respective sole discretion and on all other terms and conditions reasonably acceptable to the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders for the sole purpose of marketing the Borrower's assets. No proceeds of the Collateral, Pre-Petition Collateral or Loans may be used to pay, and the Carve-Out shall not include, any fees and expenses of any investment banker or other financial advisor retained by any Debtor unless the Administrative Agent, the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders have, in their respective sole discretion, consented to the monetary conditions and terms of such retention.

Section 7.20 [Post-Closing Date Deliverables. No later 3 Business Days after the Closing Date, deliver all documents and materials previously requested by the Pre-Petition Agent relating to and required in connection with the completion of the [Dublin] appraisal [commenced] September 30, 2011.]

#### ARTICLE VIII NEGATIVE COVENANTS

Each of Holdings and the Borrower (and, to the extent set forth in any other Loan Document, each other Loan Party) agrees with the Lenders and the Administrative Agent to each of the following, as long as any Obligation (other than contingent indemnification claims not yet due and payable) or any Commitment remains outstanding:

Section 8.1 Indebtedness. No Group Member shall, directly or indirectly, incur or otherwise remain liable with respect to or responsible for, any Indebtedness except for the following:

- (a) the Obligations;
- (b) Indebtedness existing on the date hereof and set forth on Schedule 8.1;
- (c) Indebtedness consisting of Capitalized Lease Obligations (other than with respect to a lease entered into as part of a Sale and Leaseback Transaction) existing on the date hereof and purchase money Indebtedness, in each case existing on the date hereof and incurred by any Group Member (other than Holdings) to finance the acquisition, repair, improvement or construction of fixed or capital assets of such Group Member; provided, however, that the aggregate outstanding principal amount of all such Indebtedness does not exceed \$3,500,000 at any time;
- (d) intercompany loans owing to any Loan Party and constituting Permitted Investments of a Group Member;
- (e) obligations under other Hedging Agreements entered into prior to the Petition Date for the sole purpose of hedging in the normal course of business and consistent with industry practices;



(f) Guaranty Obligations of any Group Member with respect to Permitted Indebtedness of any Loan Party (other than Indebtedness permitted hereunder in reliance upon clause (b) or (c) above, for which Guaranty Obligations may be permitted to the extent set forth in such clauses);

(g) [Reserved];

(h) Indebtedness of any Group Member thereof in respect of performance, surety, or appeal bonds provided in the ordinary course of business and constituting Liens permitted pursuant to Section 8.2, but excluding (in each case) Indebtedness incurred through or in connection with the borrowing of money or contingent obligations in respect thereof;

(i) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business;

(j) Indebtedness arising in connection with the endorsement of instruments for deposit in the ordinary course of business;

(k) judgments, attachments or awards not constituting an Event of Default;

(l) warranties of products or services, in each case incurred in the ordinary course of business;

(m) Indebtedness in connection with workmen's compensation obligations and insurance premiums incurred in the ordinary course of business; and

(n) the Pre-Petition Credit Obligations.

Section 8.2 Liens. No Group Member shall incur, maintain or otherwise suffer to exist any Lien upon or with respect to any of its property, whether now owned or hereafter acquired, or assign any right to receive income or profits, except for the following:

(a) Liens created pursuant to any Loan Document;

(b) Customary Permitted Liens of Group Members;

(c) Liens existing on the date hereof and set forth on Schedule 8.2;

(d) Liens existing on the date hereof on the property of the Borrower or any of its Subsidiaries securing Indebtedness permitted hereunder in reliance upon Section 8.1(c); provided, however, that (i) such Liens existed prior to the acquisition of, or attached substantially simultaneously with, or within 90 days after, the acquisition, repair, improvement or construction of, such property financed by such Indebtedness and (ii) such Liens do not extend to any property of any Group Member other than the property (and proceeds thereof) acquired or built, or the improvements or repairs, financed by such Indebtedness;

(e) Liens securing the Pre-Petition Credit Obligations; and

(f) Pre-Petition Senior Permitted Encumbrances of Group Members.

Section 8.3 Investments. No Group Member shall make or maintain, directly or indirectly, any Investment except for the following:

- (a) Investments existing on the date hereof and set forth on Schedule 8.3
- (b) Investments in cash and Cash Equivalents;
- (c) (i) endorsements for collection or deposit or other deposits made in connection with the purchase of equipment or utilities services in the ordinary course of business and in accordance with the Budget, (ii) extensions of trade credit (other than to Affiliates of the Borrower) arising or acquired in the ordinary course of business and (iii) Investments received in settlements in the ordinary course of business of such extensions of trade credit or other disputes with suppliers or customers;
- (d) [Reserved];
- (e) Investments by (i) Holdings in the Borrower, (ii) any Loan Party (other than Holdings) in any other Loan Party (other than Holdings) or (iii) any Group Member that is not a Loan Party in any Group Member (other than Holdings) or in any joint venture; provided, that any Investment consisting of loans or advances to any Loan Party pursuant to clause (iii) above shall be subordinated in full to the payment of the Obligations of such Loan Party on terms and conditions satisfactory to the Administrative Agent;
- (f) loans or advances to employees of the Borrower or any of its Subsidiaries to finance travel, entertainment and relocation expenses and other ordinary business purposes in the ordinary course of business as presently conducted; provided, however, that the aggregate outstanding principal amount of all loans and advances permitted pursuant to this clause (f) shall not exceed \$100,000 at any time;
- (g) [Reserved];
- (h) Investments in Hedging Agreements existing on the Closing Date permitted by Section 8.1(e); and
- (i) lease, utility and other similar deposits made (i) prior to the Closing Date in the ordinary course of business or (ii) in accordance with the Budget.

Section 8.4 Asset Sales. No Group Member shall Sell any of its property or issue shares of its own Stock, except for (a) to the extent entered into in the ordinary course of business and made to a Person that is not an Affiliate of the Borrower and (b) Sales of (i) inventory or (ii) property that has become obsolete or worn out or that is no longer useful in the business of any Group Member.

Section 8.5 Restricted Payments. (a) No Group Member (other than Holdings) shall directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment except for the following (and Holdings shall not use the proceeds of any Restricted Payment made in reliance under clause (b) below other than as set forth in such clause (b)):

(i) (x) Restricted Payments (A) by any Group Member (other than Holdings) that is a Loan Party to any Loan Party other than Holdings and (B) by any Group Member that is not a Loan Party to any Group Member other than Holdings and (y) dividends and distributions by any Subsidiary of the Borrower that is not a Loan Party to any holder of its Stock, to the extent made to all such holders ratably according to their ownership interests in such Stock; and

(ii) cash dividends and distributions on the Stock of the Borrower to Holdings declared and paid solely for the purpose of funding ordinary course operating expenses of Holdings to the extent provided in the Budget.

(b) Holdings shall not be permitted to make (a) any dividend, return of capital, distribution or any other payment or Sale of property (other than Sales (i) in the ordinary course of business and (ii) of obsolete and worn-out assets), whether direct or indirect (including through the use of Hedging Agreements, the making, repayment, cancellation or forgiveness of Indebtedness and similar Contractual Obligations) and whether in cash, Securities or other property, on account of any Stock or Stock Equivalent of Holdings, in each case now or hereafter outstanding, including with respect to a claim for rescission of a Sale of such Stock or Stock Equivalent and (b) any redemption, retirement, termination, defeasance, cancellation, purchase or other acquisition for value, whether direct or indirect (including through the use of Hedging Agreements, the making, repayment, cancellation or forgiveness of Indebtedness and similar Contractual Obligations), of any Stock or Stock Equivalent of any Group Member or of any direct or indirect parent entity of the Borrower, now or hereafter outstanding, and any payment or other transfer setting aside funds for any such redemption, retirement, termination, cancellation, purchase or other acquisition, whether directly or indirectly and whether to a sinking fund, a similar fund or otherwise.

Section 8.6 Prepayment of Indebtedness or Management Fee. No Group Member shall (w) pay any management fee, (x) prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Indebtedness, (y) make any payment in violation of any subordination terms of any Indebtedness or (z) make any payment on any Indebtedness to the extent such payment is not contemplated to be made in the Budget; provided, however, that each Group Member may, to the extent otherwise permitted by the Loan Documents, and so long as no Default is continuing and, in the case of clauses (a) and (c) below, such payment is contemplated by the Budget do each of the following:

(a) prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof (or set apart any property for such purpose) (A) in the case of any Group Member that is not a Loan Party, any Indebtedness owing by such Group Member to any other Group Member (other than Holdings) and (B) otherwise, any Indebtedness owing to any Loan Party (other than Holdings);

(b) prepay the Obligations; and

(c) (i) pay the Brant Management Fee to Brant Industries, Inc. to the extent expressly permitted by the Budget in cash solely for the period commencing on the Petition Date and ending on the earlier (x) the closing of the 363 Asset Sale Agreement or any Alternate 363 Asset Sale Agreement and (y) the Brant Management Agreement Rejection Date or such later date on which Brant Industries, Inc., the Committee, the Debtors, the Administrative Agent the Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing

in their respect sole discretion and (ii) pay the Brant Accrued Fee upon the consummation of the transactions contemplated by the 363 Asset Sale Agreement or any Alternate 363 Asset Sale Agreement to the extent the Brant Parties have performed and complied with all of their post-Petition Date obligations in all material respects under the Brant Management Agreement, the Interim Order and the Final Order.

Section 8.7 Fundamental Changes. No Group Member shall (a) merge, consolidate or amalgamate with any Person, (b) acquire all or substantially all of the Stock or Stock Equivalents of any Person or (c) acquire any brand or all or substantially all of the assets of any Person or all or substantially all of the assets constituting any line of business, division, branch, operating division or other unit operation of any Person, in each case except for the following: (x) the merger, consolidation or amalgamation of any Subsidiary of the Borrower into any Loan Party and (y) the merger, consolidation or amalgamation of any Group Member (other than Holdings) for the sole purpose, and with the sole material effect, of changing its State of organization within the United States; provided, however, that (A) in the case of any merger, consolidation or amalgamation involving the Borrower, the Borrower shall be the surviving Person and (B) in the case of any merger, consolidation or amalgamation involving any other Loan Party, a Loan Party shall be the surviving corporation and all actions required to maintain the perfection of the Lien of the Administrative Agent on the Stock or property of such Loan Party shall have been made. No Group Member shall be permitted to merge, consolidate or amalgamate with White Birch without the consent of the Administrative Agent, the Required Lenders, the Pre-Petition Lenders and the Pre-Petition Agent, in their respective sole discretion.

Section 8.8 Change in Nature of Business. (a) No Group Member (other than Holdings) shall carry on any business, operations or activities (whether directly, through a joint venture or otherwise) substantially different from those carried on by the Borrower and its Subsidiaries at the date hereof and business, operations and activities reasonably related thereto.

(b) Holdings shall not engage in any business, operations or activity, or hold any property, other than (i) holding Stock and Stock Equivalents of the Borrower, (ii) issuing, selling and redeeming its own Stock, (iii) paying taxes, (iv) holding directors' and shareholders' meetings, preparing corporate and similar records and other activities required to maintain its separate corporate or other legal structure, (v) preparing reports to, and preparing and making notices to and filings with, Governmental Authorities and to its holders of Stock and Stock Equivalents and (vi) receiving, and holding proceeds of, Restricted Payments from the Borrower and its Subsidiaries and distributing the proceeds thereof to the extent permitted in Section 8.5.

Section 8.9 Transactions with Affiliates. No Group Member shall, except as otherwise expressly permitted herein, enter into any other transaction directly or indirectly with, or for the benefit of, any Affiliate of the Borrower (including White Birch) that is not a Loan Party (including Guaranty Obligations with respect to any obligation of any such Affiliate), except for (a) transactions in the ordinary course of business on a basis no less favorable to such Group Member as would be obtained in a comparable arm's length transaction with a Person not an Affiliate of the Borrower, (b) Restricted Payments permitted to be made pursuant to Section 8.5, the proceeds of which, if received by Holdings, are used in accordance with the Budget and (c) to the extent contemplated in the Budget, reasonable salaries and other reasonable director or employee compensation and benefit arrangements (including any indemnity obligations) to officers and directors of any Group Member and any employment agreement (including customary benefits thereunder) that is entered into in the ordinary course of business. Notwithstanding anything herein to the contrary, no Restricted Payment shall be made to White Birch.

Section 8.10 Third-Party Restrictions on Indebtedness, Liens, Investments or Restricted Payments. No Group Member shall incur or otherwise suffer to exist or become effective or remain liable on or responsible for any Contractual Obligation limiting the ability of (a) any Subsidiary of the Borrower to make Restricted Payments to, or Investments in, or repay Indebtedness or otherwise Sell property to, any Group Member (other than Holdings) or (b) any Group Member to incur or suffer to exist any Lien upon any property of any Group Member, whether now owned or hereafter acquired, securing any of its Obligations (including any “equal and ratable” clause and any similar Contractual Obligation requiring, when a Lien is granted on any property, another Lien to be granted on such property or any other property), except, for each of clauses (a) and (b) above, (i) pursuant to the Loan Documents, (ii) pursuant to the Pre-Petition Credit Agreement (and the “Loan Documents” (as defined therein)), (iii) limitations on Liens (other than those securing any Obligation) on any property whose acquisition, repair, improvement or construction is financed by purchase money Indebtedness or Capitalized Lease Obligations set forth in the Contractual Obligations governing such Indebtedness or Capitalized Lease Obligations or Guaranty Obligations with respect thereto, (iv) applicable law, (v) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Group Member, (vi) customary provisions restricting assignment of any agreement that is not material to the business of the Borrower entered into by a Group Member prior to the Closing Date in the ordinary course of business, (vii) any agreement in effect on the Closing Date and at the time such Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into in contemplation of such Person becoming a Subsidiary of the Borrower and (viii) in the case of any joint venture which is not a Loan Party, restrictions in such Person’s constitutive documents or pursuant to any joint venture agreement or stockholders agreements solely to the extent of the equity interests of or assets held in the subject joint venture or other entity.

Section 8.11 Modification of Certain Documents. No Group Member shall do any of the following:

(a) waive or otherwise modify any term of any Constituent Document of, or otherwise change the capital structure of, any Group Member (including the terms of any of their outstanding Stock or Stock Equivalents); provided, that, for the avoidance of doubt, the provisions of this Section 8.11(a) shall not restrict the making of any intercompany loans permitted under Section 8.1(d);

(b) waive or otherwise modify any term of any Subordinated Debt if the effect thereof on such Subordinated Debt;

(c) enter into any amendment, waiver, modification, supplement or restatement of the Brant Agreement not expressly provided for by the Interim Order or the Final Order, as applicable, or enter into any other agreements with Brant Industries, Inc. or any other Brant Party.

Section 8.12 Accounting Changes; Fiscal Year. No Group Member shall change its (a) accounting treatment or reporting practices, except as required by GAAP or any Requirement of Law, or (b) its Fiscal Year or its method for determining Fiscal Quarters or Fiscal Months.

Section 8.13 Margin Regulations. No Group Member shall use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within

the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

Section 8.14 Compliance with ERISA. No ERISA Affiliate shall cause or suffer to exist (a) any event that could result in the imposition of a Lien (other than a Permitted Lien) with respect to any Title IV Plan or Multiemployer Plan or (b) any other ERISA Event that would, in the aggregate, have a Material Adverse Effect. No Group Member shall cause or suffer to exist any event that could result in the imposition of a Lien (other than a Permitted Lien) with respect to any Benefit Plan.

Section 8.15 Hazardous Materials. No Group Member shall cause or suffer to exist any Release of any Hazardous Material at, to or from any Real Estate that would violate any Environmental Law, form the basis for any Environmental Liabilities or otherwise adversely affect the value or marketability of any real property (whether or not owned by any Group Member), other than such violations, Environmental Liabilities and effects that would not, in the aggregate, have a Material Adverse Effect.

Section 8.16 Bankruptcy Provisions. No Group Member shall: (a) notwithstanding the Debtors' covenants regarding the 363 Sale, file or approve a plan of reorganization or liquidation (unless such plan contains provisions providing that the Obligations and the Pre-Petition Credit Obligations have been indefeasibly paid in full in cash (or, if applicable, cash collateralized in full) on or before the effective date of such confirmed plan of reorganization or liquidation) without the consent of the Administrative Agent and the Required Lenders; (b) seek or consummate a Sale of assets under a plan of reorganization, Section 363(b) of the Bankruptcy Code or otherwise (other than the 363 Sale) without the consent of the Administrative Agent and the Required Lenders; (c) except for the Carve-Out (in an amount up to the Carve-Out Cap and subject to the other limitations set forth herein and in the Interim Order), incur administrative expense claims *pari passu* with or senior to the Obligations; (d) seek or consent to any modification, stay, vacation or amendment with respect to (i) any order made on the Petition Date (which order and motions in respect thereof shall be acceptable in form and substance to the Administrative Agent in its sole discretion), (ii) the Interim Order, (iii) the Final Order or (iv) the Loan Documents, except in each case as agreed to by the Administrative Agent and Required Lenders in their respective sole discretion; (e) create any Lien that ranks senior to, or *pari passu* with, the Liens securing the Obligations; (f) make cash expenditures on account of claims incurred (i) by critical vendors prior to the Petition Date or (ii) pursuant to Section 503(b)(9) of the Bankruptcy Code, except in each case as agreed to by the Administrative Agent and the Required Lenders or as permitted by the Budget or (g) seek or consent to any order seeking authority to take any action prohibited by the Interim Order or Final Order without the consent of the Administrative Agent and the Required Lenders or otherwise required by any Requirement of Law.

Section 8.17 Compliance with Budget. No Group Member shall make any cash disbursement that is not contemplated by the Budget.

## ARTICLE IX EVENTS OF DEFAULT

Section 9.1 Definition. Each of the following shall be an Event of Default:

(a) the Borrower shall fail to pay (i) any principal of any Loan when the same becomes due and payable or (ii) any interest on any Loan, any fee under any Loan Document or any

other Obligation (other than those set forth in clause (i) above) and, in the case of this clause (ii), such non-payment continues for a period of 3 Business Days after the due date therefor; or

(b) any representation, warranty or certification made or deemed made by or on behalf of any Loan Party in any Loan Document or by or on behalf of any Loan Party in connection with any Loan Document (including in any document delivered in connection with any Loan Document) shall prove to have been incorrect in any material respect when made or deemed made unless such representation, warranty or certification contains a “materiality” qualifier, in which case it shall prove to have been incorrect in any respect; or

(c) any Loan Party shall fail to comply with (i) any provision of Article V (Financial Covenants), and such Event of Default under this clause (i) shall be deemed to occur on the last day of any specified measurement period, regardless of when the information reflecting such breach is delivered to Administrative Agent, (ii) Section 6.1 (Financial Statements) if, in the case of this clause (ii) (other than with respect to Section 6.1 (e), which shall be an immediate Event of Default), such failure shall remain unremedied for 3 Business Days, (iii) Section 7.1 (Maintenance of Corporate Existence), (iv) Section 7.5 (Maintenance of Insurance), (v) Section 7.9 (Use of Proceeds), (vi) Section 7.11 (Deposit Accounts; Securities Accounts and Cash Collateral Accounts), (vii) Section 7.13 (Compliance with Milestones), except to the extent the Bankruptcy Court determines that the Secured Parties or Pre-Petition Secured Parties have caused such failure to perform any Milestone, (xviii) Section 7.15 (Entry of Final Order), (xix) Section 7.17 Chief Restructuring Officer), (xx) [Reserved], (xxi) Section 7.21 (Investment Banker), (xxii) Article VIII (Negative Covenants), (xxiii) any other provision of any Loan Document if, in the case of this clause (xxiii), such failure shall remain unremedied for 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower becomes aware of such failure and (B) the date on which notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders, or (xxiv) any provision of Section 7.7 (Access to Books and Property) or Section 7.16 (Cooperation), and such failure shall remain unremedied for 2 Business Days after the date on which the Administrative Agent or the Pre-Petition Agent has delivered written notice thereof to such Loan Party; or

(d) one or more judgments, orders or decrees (or other similar process) shall be rendered against any Group Member with respect to liabilities incurred or assumed after the Petition Date, (i)(A) in the case of money judgments, orders and decrees, involving an aggregate amount (excluding amounts adequately covered by insurance payable to any Group Member (“Threshold Amount”), to the extent the relevant insurer has not denied coverage therefor) in excess of \$250,000 or (B) otherwise, that could reasonably be expected to have, in the aggregate, a Material Adverse Effect and (ii)(A) enforcement proceedings shall have been commenced by any creditor upon an aggregate of such judgments, orders or decrees in excess of the Threshold Amount or (B) an aggregate of such judgments, orders and decrees in excess of the Threshold Amount shall not have been vacated or discharged for a period of 30 consecutive days and there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof; or

(e) except pursuant to a valid, binding and enforceable termination or release permitted under the Loan Documents and executed by the Administrative Agent or as otherwise expressly permitted under any Loan Document, (i) any provision of any Loan Document shall, at any time after the delivery of such Loan Document, fail to be valid and binding on, or enforceable against, any Loan Party party thereto or (ii) any Loan Document purporting to grant a Lien to secure any Obligation shall, at any time after the delivery of such Loan Document, fail to create a valid and enforceable Lien on any Collateral purported to be covered thereby or such Lien shall fail

or cease to be a perfected Lien with the priority required in the relevant Loan Document, or any Group Member shall state in writing that any of the events described in clause (i) or (ii) above shall have occurred; or

(f) the Bankruptcy Court shall enter an order authorizing, approving or granting (or the Debtors shall file a motion seeking such authorization, approval or grant) of (i) additional post-Petition Date financing not otherwise permitted herein, (ii) any liens on the Collateral not otherwise permitted herein, (iii) dismissal of the Cases or conversion of any Case to one under Chapter 7 of the Bankruptcy Code, (iv) appointment of a Chapter 11 trustee in any of the Cases, (v) any other superpriority claim senior to or pari passu with superpriority claims of the Administrative Agent, the other Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties, (vi) modification of the DIP Facilities, the Interim Order or the Final Order, as applicable, (vii) any action materially adverse to the Administrative Agent, the other Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties, or their rights and remedies with respect to or interest in the Collateral, (viii) appointment of an examiner having powers beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code in any of the Cases, or (ix) relief from the automatic stay for the benefit of any creditor with a security interest in the Collateral without the consent of the Administrative Agent and the Required Lenders; or

(g) any Debtor shall pay any claim accrued prior to the Petition Date without the prior written consent of the Administrative Agent and the Required Lenders in their sole discretion or other than as permitted by the Budget; or

(h) any Debtor shall commence any action against the Administrative Agent, any other Secured Parties, the Pre-Petition Agent and any other Pre-Petition Secured Parties, on behalf of itself or any of its affiliates, officers or employees; or

(i) the Interim Order shall cease to be in full force and effect or shall have been reversed, stayed, vacated or subjected to a stay pending appeal or, without the prior written consent of the Administrative Agent and the Required Lenders in their respective sole discretion, modified or amended; or

(j) the Bankruptcy Court shall not enter the Final Order on or before a date that is 30 days after the entry of the Interim Order; or

(k) the Final Order shall cease to be in full force and effect or shall have been reversed, stayed, vacated or subjected to a stay pending appeal or, without the prior written consent of the Administrative Agent and the Required Lenders in their respective sole discretion, modified or amended; or

(l) the Debtor shall breach any provision of the Interim Order, the Final Order, the CRO Order, the Sale Procedures Order or the Sale Order; or

(m) a claim under Section 506(c) of the Bankruptcy Code or otherwise shall have been allowed against any of all of the Administrative Agent, the other Secured Parties or the Collateral, or against any Pre-Petition Agent or other Pre-Petition Secured Party or the collateral securing the Pre-Petition Credit Obligations; or



(n) the filing of any plan of reorganization or related disclosure statement or any direct or indirect amendment to such plan or disclosure statement, or the entry of an order confirming any such plan of reorganization or approving any such disclosure statement or approving any such amendment, in each case that either fails to provide for indefeasible payment in full in cash (or, as applicable, cash collateralization in full) of the DIP Facilities (and irrevocable termination of all Commitments) and the Pre-Petition Credit Obligations or treats the claims of the Administrative Agent and Lenders in any manner to which they do not consent in their respective sole discretion; or

(o) the Bankruptcy Court shall enter an order allowing a Sale of all or substantially all of the Debtors' assets pursuant to Section 363(b) of the Bankruptcy Code without the written consent of the Administrative Agent and Required Lenders in their respective sole discretion; or

(p) the Bankruptcy Court shall enter an order that results in any termination or modification of the exclusivity periods set forth in Section 1121 of the Bankruptcy Code except as provided in the Interim or Final Order; or

(q) the Bankruptcy Court shall enter an order (i) resulting in the marshalling of all or any portion of the Collateral or (ii) precluding the attachment of liens to post-petition property based on the "equities of the case" under Section 552(b) of the Bankruptcy Code; or

(r) after entry thereof, either of the Sale Procedures Order or the Sale Order shall cease to be in full force and effect, shall have been reversed, stayed, vacated or subject to stay pending appeal or shall have been modified or amended without the prior written consent of the Administrative Agent and the Required Lenders in their respective sole discretion; or

(s) any termination or resignation of the Chief Restructuring Officer, shall occur without the contemporaneous engagement of a replacement Chief Restructuring Officer satisfactory to the Administrative Agent and the Required Lenders or there shall occur any other failure to comply with the terms of the Chief Restructuring Officer's engagement letter; or

(t) the Debtors shall undertake any act or omission (including any act or omission undertaken by any Brant Party on behalf of any of the Debtors) in contravention of the instructions provided by the Chief Restructuring Officer within the scope of its responsibilities unless such act or omission is compelled by applicable laws or rules of a court of law; or

(u) (x) so long as the Brant Management Agreement has not been validly rejected by the Debtors pursuant to a binding order of the Bankruptcy Court or deemed rejected by the Debtors pursuant to the Interim Order or Final Order, as applicable, Brant Industries, Inc. shall default or fail to comply with any of their respective obligations under the Brant Agreement or any other applicable executory contract between any or all of the Debtors, on the one hand, and Brant Industries, Inc., on the other hand or (y) Brant Industries or any Debtor fails to comply with the terms of Paragraph 21(d) or (f) of the Interim Order; or

(v) an ERISA Event shall have occurred that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect or the imposition of a Lien or security interest pursuant to Section 430(k) of the Code or Section 303(k) of ERISA; or

(w) [any information contained in any Borrowing Base Certificate is untrue or incorrect in any way that results in the Borrowing Base (as defined in the Borrowing Base Certificate) being overstated by more than \$100,000.]

Section 9.2 Remedies. (a) During the continuance of any Event of Default, the Administrative Agent may, and, at the request of the Required Lenders, shall, in each case by notice to the Borrower and in addition to any other right or remedy provided under any Loan Document or by any applicable Requirement of Law, do each of the following: (i) declare all or any portion of the Commitments terminated, whereupon the Commitments shall immediately be reduced by such portion or, in the case of a termination in whole, shall terminate together with any obligation any Lender may have hereunder to make any Loan, (ii) declare immediately due and payable all or part of any Obligation (including any accrued but unpaid interest thereon), whereupon the same shall become immediately due and payable, without presentment, demand, protest or further notice or other requirements of any kind, all of which are hereby expressly waived by Holdings and the Borrower (and, to the extent provided in any other Loan Document, other Loan Parties), (iii) terminate the DIP Facilities and any other Loan Documents as to any future liability or obligation of the Administrative Agent and the Lenders, but without affecting any of the Obligations or the Liens securing the Obligations and (iv) declare a termination, reduction or restriction on the ability of the Debtors to use any cash collateral (any such declaration shall be made to the Debtors, the Committee(s) and the United States Trustee, and shall be referred to herein as a “Termination Declaration” and the date which is the earliest to occur of any such Termination Declaration being herein referred to as the “Termination Declaration Date”); provided, however, that, effective immediately upon the occurrence of the Events of Default specified in Sections 9.1(c)(ii), (c)(v), (f), (h), (i), (k), (n) and (o), (x) the Commitments of each Lender to make Loans shall each automatically be terminated and (y) each Obligation (including in each case any accrued all accrued but unpaid interest thereon) shall automatically become and be due and payable, without presentment, demand, protest or further notice or other requirement of any kind, all of which are hereby expressly waived by Holdings and the Borrower (and, to the extent provided in any other Loan Document, any other Loan Party).

(b) As provided in the Interim Order or Final Order, as applicable, on the fifth Business Day following a Termination Declaration Date, the automatic stay provided in Section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court and the Administrative Agent shall have relief from the automatic stay upon expedited notice to the Debtors, the Committee and the United States Trustee to foreclose on all or any portion of the Collateral, including by collecting accounts receivable and applying the proceeds thereof to the Obligations, occupying the Debtors’ premises to sell or otherwise dispose of the Collateral or otherwise exercising remedies against the Collateral permitted by applicable non-bankruptcy law. The Debtors and any statutory committee (including the Committee) shall be entitled to contest whether an Event of Default has occurred during such five Business Day period. Unless during such hearing the Bankruptcy Court determines that an Event of Default has not occurred and/or is not continuing, the automatic stay, as to the Administrative Agent and the other Secured Parties, shall automatically terminate upon the end of such five-day period. Notwithstanding the foregoing, nothing herein shall preclude the Administrative Agent from seeking an order from the Bankruptcy Court authorizing the Administrative Agent to exercise any enforcement rights or remedies with respect to the Collateral on less than five (5) Business Days’ notice or the Debtors from opposing any such request.

ARTICLE X  
THE ADMINISTRATIVE AGENT

Section 10.1 Appointment and Duties.

(a) Appointment of Administrative Agent. Each Lender hereby appoints GE Capital (together with any successor Administrative Agent pursuant to Section 10.9) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Group Member, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that the Administrative Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for the Administrative Agent and each other Secured Party for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by a Loan Party with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

(c) Limited Duties. Under the Loan Documents, the Administrative Agent (i) is acting solely on behalf of the Lenders (except to the limited extent provided in Section 2.14(b) with respect to the Register and in Section 10.11), with duties that are entirely administrative in nature, notwithstanding the use of the defined term “Administrative Agent”, the terms “agent”, “administrative agent” and “collateral agent” and similar terms in any Loan Document to refer to the Administrative Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Secured Party and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender hereby waives and agrees not to assert any claim against the Administrative Agent

based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Notwithstanding anything herein to the contrary, no Lender holding a title listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as Administrative Agent or a Lender hereunder.

Section 10.2 Binding Effect. Each Lender agrees that (i) any action taken by the Administrative Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

Section 10.3 Use of Discretion.

(a) No Action without Instructions. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

(b) Right Not to Follow Certain Instructions. Notwithstanding clause (a) above, the Administrative Agent shall not be required to take, or to omit to take, any action (i) unless, upon demand, the Administrative Agent receives an indemnification satisfactory to it from the Lenders (or, to the extent applicable and acceptable to the Administrative Agent, any other Secured Party) against all Liabilities that, by reason of such action or omission, may be imposed on, incurred by or asserted against the Administrative Agent or any Related Person thereof or (ii) that is, in the opinion of the Administrative Agent or its counsel, contrary to any Loan Document or applicable Requirement of Law.

Section 10.4 Delegation of Rights and Duties. The Administrative Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Secured Party). Any such Person shall benefit from this Article X to the extent provided by the Administrative Agent.

Section 10.5 Reliance and Liability. (a) The Administrative Agent may, without incurring any liability hereunder, (i) treat the payee of any Note as its holder until such Note has been assigned in accordance with Section 11.2(e), (ii) rely on the Register to the extent set forth in Section 2.14, (iii) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, any Loan Party) and (iv) rely and act upon any document and information (including those transmitted by Electronic Transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties.

(b) None of the Administrative Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender, Holdings and the Borrower hereby waive and shall not assert (and each of Holdings and the Borrower shall cause each other Loan Party to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment by a court of competent jurisdiction) in connection with the duties expressly set forth herein. Without limiting the foregoing, the Administrative Agent:

(i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons selected with reasonable care (other than employees, officers and directors of the Administrative Agent, when acting on behalf of the Administrative Agent);

(ii) shall not be responsible to any Secured Party for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document;

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Person or any Loan Party in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to any Loan Party, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents; and

(iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of any Loan Party or as to the existence or continuation or possible occurrence or continuation of any Default or Event of Default and shall not be deemed to have notice or knowledge of such occurrence or continuation unless it has received a notice from the Borrower, any Lender describing such Default or Event of Default clearly labeled “notice of default” (in which case the Administrative Agent shall promptly give notice of such receipt to all Lenders);

and, for each of the items set forth in clauses (i) through (iv) above, each Lender, Holdings and the Borrower hereby waives and agrees not to assert (and each of Holdings and the Borrower shall cause each other Loan Party to waive and agree not to assert) any right, claim or cause of action it might have against the Administrative Agent based thereon.

Section 10.6 Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock and Stock Equivalents of, engage in any kind of business with, any Loan Party or Affiliate thereof as though it were not acting as Administrative Agent and may receive separate fees and other payments

therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms “Lender” and “Required Lenders” and any similar terms shall, except where otherwise expressly provided in any Loan Document, include the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender, or as one of the Required Lenders.

Section 10.7 Lender Credit Decision. Each Lender acknowledges that it shall, independently and without reliance upon the Administrative Agent, any Lender or any of their Related Persons or upon any document (including the Disclosure Documents) solely or in part because such document was transmitted by the Administrative Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of each Loan Party and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party that may come in to the possession of the Administrative Agent or any of its Related Persons.

Section 10.8 Expenses; Indemnities. (a) Each Lender agrees to reimburse the Administrative Agent and each of its Related Persons (to the extent not reimbursed by any Loan Party) promptly upon demand for such Lender’s Pro Rata Share with respect to the DIP Facilities of any costs and expenses (including fees, costs and expenses of financial, legal and other advisors and Other Taxes paid in the name of, or on behalf of, any Loan Party) that may be incurred by the Administrative Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, consent, waiver or enforcement (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

(b) Each Lender further agrees to indemnify the Administrative Agent and each of its Related Persons (to the extent not reimbursed by any Loan Party), for such Lender’s aggregate Pro Rata Share with respect to the DIP Facilities from and against the Liabilities (including taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to on or for the account of any Lender) that may be imposed on, incurred by or asserted against the Administrative Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by the Administrative Agent or any of its Related Persons under or with respect to any of the foregoing; provided, however, that except with respect to taxes, no Lender shall be liable to the Administrative Agent or any of its Related Persons to the extent such liability has resulted primarily from the gross negligence or willful misconduct of the Administrative Agent or, as the case may be, such Related Person, as determined by a court of competent jurisdiction in a final non-appealable judgment or order.

Section 10.9 Resignation of Administrative Agent. (a) The Administrative Agent may resign at any time by delivering notice of such resignation to the Lenders and the

Borrower, effective on the date set forth in such notice or, if not such date is set forth therein, upon the date such notice shall be effective. If the Administrative Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent. If, within 30 days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from among the Lenders. Each appointment under this clause (a) shall be subject to the prior consent of the Borrower, which may not be unreasonably withheld but shall not be required during the continuance of a Default.

(b) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as Administrative Agent under the Loan Documents and (iv) subject to its rights under Section 10.3, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Loan Documents.

Section 10.10 Release of Collateral or Guarantors. Each Lender hereby consents to the release and hereby directs the Administrative Agent to release (or, in the case of clause (b)(ii) below, release or subordinate) the following:

(a) any Subsidiary of the Borrower from its guaranty of any Obligation of any Loan Party if all of the Securities of such Subsidiary owned by any Group Member are Sold in a Sale permitted under the Loan Documents (including pursuant to a waiver or consent), to the extent that, after giving effect to such Sale, such Subsidiary would not be required to guaranty any Obligations pursuant to Section 7.10; and

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is Sold by a Loan Party in a Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in proceeds of such Collateral pursuant to Section 7.10 after giving effect to such Sale have been granted, (ii) any property subject to a Lien permitted hereunder in reliance upon Section 8.2(d) and (iii) all of the Collateral and all Loan Parties, upon (A) termination of the Commitments, (B) payment and satisfaction in full of all Loans and all other Obligations that the Administrative Agent has been notified in writing are then due and payable by the holder of such Obligation, (C) deposit of cash collateral with respect to all known contingent Obligations, in amounts and on terms and conditions and with parties satisfactory to the Administrative Agent and each Indemnitee that is owed such Obligations and (D) to the extent requested by the Administrative Agent, receipt by the Secured Parties of liability releases from the Loan Parties each in form and substance acceptable to the Administrative Agent.

Each Lender hereby directs the Administrative Agent, and the Administrative Agent hereby agrees, upon receipt of reasonable advance notice from the Borrower, to execute and deliver or file such documents and to perform other actions reasonably necessary to release the guaranties and Liens when and as directed in this Section 10.10.

Section 10.11 Additional Secured Parties. The benefit of the provisions of the Loan Documents directly relating to the Collateral or any Lien granted thereunder shall extend to and be available to any Secured Party that is not a Lender as long as, by accepting such benefits, such Secured Party agrees, as among the Administrative Agent and all other Secured Parties, that such Secured Party is bound by (and, if requested by the Administrative Agent, shall confirm such agreement in a writing in form and substance acceptable to the Administrative Agent) this Article X, Section 11.8 (Right of Setoff), Section 11.9 (Sharing of Payments) and Section 11.20 (Non-Public Information; Confidentiality) and the decisions and actions of the Administrative Agent and the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders) to the same extent a Lender is bound; provided, however, that, notwithstanding the foregoing, (a) such Secured Party shall be bound by Section 10.8 only to the extent of Liabilities, costs and expenses with respect to or otherwise relating to the Collateral held for the benefit of such Secured Party, in which case the obligations of such Secured Party thereunder shall not be limited by any concept of Pro Rata Share or similar concept, (b) except as set forth specifically herein, each of the Administrative Agent and the Lenders shall be entitled to act at its sole discretion, without regard to the interest of such Secured Party, regardless of whether any Obligation to such Secured Party thereafter remains outstanding, is deprived of the benefit of the Collateral, becomes unsecured or is otherwise affected or put in jeopardy thereby, and without any duty or liability to such Secured Party or any such Obligation and (c) except as set forth specifically herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

## ARTICLE XI MISCELLANEOUS

Section 11.1 Amendments, Waivers, Etc. (a) No amendment or waiver of any provision of any Loan Document (other than the Control Agreements) and no consent to any departure by any Loan Party therefrom shall be effective unless the same shall be in writing and signed (1) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency (to the extent such amendment, consent or waiver would not have a material effect on the Loans or any Lender) or granting a new Lien for the benefit of the Secured Parties or extending an existing Lien over additional property, by the Administrative Agent and the Borrower, and (2) in the case of any other amendment, waiver or consent, by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower; provided, however, that no amendment, consent or waiver described in clause (2) above shall, unless in writing and signed by each Lender directly affected thereby (or by the Administrative Agent with the consent of such Lender), in addition to any other Person the signature of which is otherwise required pursuant to any Loan Document, do any of the following:

- (i) waive any condition specified in Section 3.1, except any condition referring to any other provision of any Loan Document;
- (ii) increase the Commitment of such Lender or subject such Lender to any additional obligation;



(iii) reduce (including through release, forgiveness, assignment or otherwise) (A) the principal amount of, the interest rate on, or any obligation of the Borrower to repay (whether or not on a fixed date), any outstanding Loan owing to such Lender or (B) any fee or accrued interest payable to such Lender; provided, however, that this clause (iii) does not apply to (x) any change to or waiver of any provision increasing any interest rate or fee during the continuance of an Event of Default or to any payment of any such increase, (y) any modification to any financial covenant set forth in Article V or in any definition set forth therein or principally used therein or (z) any change to mandatory prepayments, including those required under Section 2.8 hereunder;

(iv) waive or postpone any Scheduled Termination Date or other scheduled date fixed for the payment, in whole or in part, of principal of or interest on any Loan or fee owing to such Lender or for the reduction of such Lender's Commitment; provided, however, that this clause (iv) does not apply to any change to mandatory prepayments, including those required under Section 2.8, or to the application of any payment, including as set forth in Section 2.12;

(v) except as provided in Section 10.10, release all or substantially all of the Collateral or any Guarantor from its guaranty of any Obligation of the Borrower;

(vi) reduce or increase the proportion of Lenders required for the Lenders (or any subset thereof) to take any action hereunder or change the definition of the terms "Required Lenders", "Pro Rata Share" or "Pro Rata Outstandings"; or

(vii) amend Section 10.10 (Release of Collateral or Guarantors), Section 11.9 (Sharing of Payments) or this Section 11.1;

and provided, further, that (x) no amendment, waiver or consent shall affect the rights or duties under any Loan Document of, or any payment to, the Administrative Agent (or otherwise modify any provision of Article X or the application thereof) or any SPV that has been granted an option pursuant to Section 11.2(f) unless in writing and signed by the Administrative Agent or, as the case may be, such SPV in addition to any signature otherwise required and (y) the consent of the Borrower shall not be required to change any order of priority set forth in Section 2.12.

(b) Each waiver or consent under any Loan Document shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Loan Party shall entitle any Loan Party to any notice or demand in the same, similar or other circumstances. No failure on the part of any Secured Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

(c) Notwithstanding anything to the contrary set forth herein, each amendment, waiver or consent under any Loan Document made pursuant to this Section 11.1 that required the consent of the Required Lenders hereunder (including any amendment, waiver or consent that required the consent of the Required Lenders and other Lenders or other parties hereunder) shall be effective only upon receipt of the consent of the Pre-Petition Required Lenders in addition to any other consents expressly required hereunder.

#### Section 11.2 Assignments and Participations; Binding Effect.

(a) Binding Effect. This Agreement shall become effective when it shall have been executed by Holdings, the Borrower and the Administrative Agent and when the Administrative Agent shall have been notified by each Lender that such Lender has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, Holdings, the Borrower (in each case except for Article X), the Administrative Agent, each Lender and, to the extent provided in Section 10.11, each other Indemnitee and Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document (including in Section 10.9), none of Holdings, the Borrower or the Administrative Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may, with prior written notice to the Borrower of the assignee and the amount of such assignment, sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Loans and Letters of Credit) to (i) any existing Lender, (ii) any Affiliate or Approved Fund of any existing Lender or (iii) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent; provided, however, that (w) each Lender agrees that it shall not assign any Interim Date Loans or Delayed Draw Loans or Delayed Draw Commitments hereunder unless such Lender assigns (or causes one of its Affiliates to assign) an equal pro rata portion of the Delayed Draw Loans and Delayed Draw Commitments (in the case of an assignment of Interim Date Loans), Interim Date Loans and Delayed Draw Commitments (in the case of an assignment of Delayed Draw Loans) and Interim Date Loans and Delayed Draw Loans (in the case of an assignment of Delayed Draw Commitments) held by such Lender and its Affiliates to the applicable assignee, (x) such Sales shall be ratable between the DIP Facilities and must be ratable among the obligations owing to and owed by such Lender with respect to a DIP Facility, (y) for each DIP Facility, the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Loans and Commitments subject to any such Sale shall be in a minimum amount of \$1,000,000, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in such DIP Facility or is made with the prior consent of the Borrower and the Administrative Agent and (z) such Sales by Defaulting Lenders shall be subject to the Administrative Agent's prior written consent in all instances. No assignments of Loans to the Borrower, Holdings, any of their respective Subsidiaries or Affiliates, any Brant Parties, White Birch, Black Diamond or any of their respective employees, agents or shareholders shall be permitted, and any purported assignment to such Persons shall be null and void.

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to the Administrative Agent an Assignment via an electronic settlement system designated by the Administrative Agent (or if previously agreed with the Administrative Agent, via a manual execution and delivery of the assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to the Administrative Agent), any tax forms required to be delivered pursuant to Section 2.17(f) and payment of an assignment fee in the amount of \$3,500, provided that (1) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (2) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 shall be due in connection with such Sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such assignment is made in

accordance with Section 11.2(b)(iii), upon the Administrative Agent (and the Borrower, if applicable) consenting to such Assignment, from and after the effective date specified in such Assignment, the Administrative Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Effectiveness. Subject to the recording of an Assignment by the Administrative Agent in the Register pursuant to Section 2.14(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto except that each Lender agrees to remain bound by Article X, Section 11.8 (Right of Setoff) and Section 11.9 (Sharing of Payments) to the extent provided in Section 10.11 (Additional Secured Parties)).

(e) Grant of Security Interests. In addition to the other rights provided in this Section 11.2, each Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board), without notice to the Administrative Agent or (B) any holder of, or trustee for the benefit of the holders of, such Lender's Securities by notice to the Administrative Agent; provided, however, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of such Lender hereunder and no such Lender shall be relieved of any of its obligations hereunder.

(f) Participants and SPVs. (i) In addition to the other rights provided in this Section 11.2, each Lender may, (x) with notice to the Administrative Agent, grant to an SPV the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder (and the exercise of such option by such SPV and the making of Loans pursuant thereto shall satisfy the obligation of such Lender to make such Loans hereunder) and such SPV may assign to such Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from the Administrative Agent or the Borrower, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Loans); provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPV or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Loan Parties and the Secured Parties towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPV shall be entitled to the benefit of Sections 2.16 (Breakage Costs; Increased Costs; Capital Requirements) and 2.17 (Taxes) (subject to the provisions of such

Sections), but only to the extent such participant or SPV delivers the tax forms such Lender is required to collect pursuant to Section 2.17(f) and then only to the extent of any amount to which such Lender would be entitled in the absence of any such grant or participation and (B) each such SPV may receive other payments that would otherwise be made to such Lender with respect to Loans funded by such SPV to the extent provided in the applicable option agreement and set forth in a notice provided to the Administrative Agent by such SPV and such Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPV or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPV or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (iii) and (iv) of Section 11.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in Section 11.1(a)(v) (or amendments, consents and waivers with respect to Section 10.10 to release all or substantially all of the Collateral). No sale of participations of Loans to the Borrower, Holdings, any of their respective Subsidiaries or Affiliates, any Brant Parties, White Birch, Black Diamond or any of their respective employees, agents or shareholders shall be permitted, and any purported sale of participations to such Persons shall be null and void. No party hereto shall institute (and each of Borrower and Holdings shall cause each other Loan Party not to institute) against any SPV grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPV; provided, however, that each Lender having designated an SPV as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to get reimbursed by such SPV for any such Liability). The agreement in the preceding sentence shall survive the termination of the Commitments and the payment in full of the Obligations.

(ii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal and interest amount of each participant's interest in the Loans held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of the participation in question for all purposes of this Agreement notwithstanding any notice to the contrary.

Section 11.3 Costs and Expenses. Any action taken by any Loan Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of any Secured Party, shall be at the expense of such Loan Party, and no Secured Party shall be required under any Loan Document to reimburse any Loan Party or Group Member therefor except as expressly provided therein. In addition, the Borrower agrees to pay or reimburse upon demand (a) the Administrative Agent and each Secured Party (including Avenue) for all reasonable and documented out-of-pocket costs and expenses incurred by them or any of their respective Related Persons in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation, monitoring (including the monitoring of the related Cases) or administration of, any modification of any term of or termination of, any Loan Document, any

commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein (including periodic audits in connection therewith and environmental audits and assessments), in each case including the reasonable and documented fees, costs and expenses of the respective legal, financial and other professional advisors to the Administrative Agent and each Secured Party (including Avenue) or their respective Related Persons in each applicable jurisdiction, fees, costs and expenses incurred in connection with Intralinks® or any other E-System and allocated to the DIP Facilities by the Administrative Agent or any Secured Party (including Avenue) in their respective sole discretion and fees, charges, costs and expenses of the auditors, appraisers, printers and other of their Related Persons retained by or on behalf of any of them or any of their Related Persons, (b) the Administrative Agent and the Secured Parties for all reasonable costs and expenses incurred by them or any of their respective Related Persons in connection with internal audit reviews and Collateral examinations (which shall be reimbursed, in addition to the out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by the Administrative Agent or each Secured Party (including Avenue) for its examiners) and (c) each of the Administrative Agent and each Secured Party (including Avenue), their respective Related Persons, and each Lender for all costs and expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out”, (ii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding and any proceeding that the Borrower, any Loan Party or Group Member initiated or is party to) related to any Group Member, Loan Document, Obligation or Related Transaction (or the response to and preparation for any subpoena or request for document production relating thereto), including fees, costs and expenses of counsel (including allocated costs of internal counsel). Notwithstanding anything to the contrary contained herein, any amounts payable under Sections 11.3 or 11.4 shall be paid to the Administrative Agent or any other applicable Secured Party (including Avenue) whether or not such fee, cost or expense is set forth in the Budget. For the avoidance of doubt, this Section 11.3 shall not apply to Taxes (or taxes excluded from the definition thereof), other than Taxes imposed on costs and expenses unrelated to Taxes (as excluded taxes), such as sales taxes on reimbursable costs or expenses.

Section 11.4 Indemnities. (a) The Borrower agrees to indemnify, hold harmless and defend the Administrative Agent, each Lender, and each of their respective Related Persons (each such Person being an “Indemnitee”) from and against all Liabilities (including brokerage commissions, fees and other compensation) that may be imposed on, incurred by or asserted against any such Indemnitee in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Disclosure Document, any Obligation (or the repayment thereof), the use or intended use of the proceeds of any Loan, any Related Transaction, or any securities filing of, or with respect to, any Group Member, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Group Member or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E-Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of Securities or creditors (and including attorneys’ fees in any case), whether or not the Borrower, any Loan Party, any Group Member or any such Indemnitee, Related Person, holder or creditor is a party thereto,

and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise, (iv) all actions and omissions of the Chief Restructuring Officer to the full extent allowable under New York law or (v) any other act, event or transaction related, contemplated in or attendant to any of the foregoing, including any act or omission by any Debtor, any Brant Party or the Chief Restructuring Officer (collectively, the “Indemnified Matters”); provided, however, that the Borrower shall not have any liability under this Section 11.4 to any Indemnitee with respect to any Indemnified Matter, and no Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), to the extent such liability has resulted primarily from the gross negligence or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Furthermore, each of Holdings and the Borrower waives and agrees not to assert against any Indemnitee, and shall cause each other Loan Party to waive and not assert against any Indemnitee, any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Without limiting the foregoing, “Indemnified Matters” includes all Environmental Liabilities, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Related Person or the owner, lessee or operator of any property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred solely following foreclosure by any Secured Party or following any Secured Party having become the successor-in-interest to any Loan Party and (ii) are attributable solely to acts of such Indemnitee.

(c) For the avoidance of doubt, this Section 11.4 shall not apply to Taxes (or taxes excluded from the definition thereof), except for Taxes representing Liabilities in respect of a claim not related to Taxes (or excluded taxes).

Section 11.5 Survival. Any indemnification or other protection provided to any Indemnitee pursuant to any Loan Document (including pursuant to Section 2.17 (Taxes), Section 2.16 (Breakage Costs; Increased Costs; Capital Requirements), Article X (The Administrative Agent), Section 11.3 (Costs and Expenses), Section 11.4 (Indemnities) or this Section 11.5) and all representations and warranties made in any Loan Document shall (A) survive the termination of the Commitments and the payment in full of other Obligations and (B) inure to the benefit of any Person that at any time held a right thereunder (as an Indemnitee or otherwise) and, thereafter, its successors and permitted assigns. In addition, notwithstanding anything to contrary set forth herein, any protection provided to the Lenders or any restrictions on the activities of the Debtors under Articles IV, V, VI, VII, VIII or IX hereunder, shall, solely for the benefit of the Pre-Petition Agent and the Pre-Petition Lenders (A) survive the termination of this Agreement and/or the Commitments and the payment in full of other Obligations and (B) inure to the benefit of any Pre-Petition Lenders and their, its successors and permitted assigns, in each case subject to the terms of the Interim Order and the Final Order, as applicable and upon the termination of this Agreement and/or the Commitments and the payment in full of other Obligations hereunder, the provisions of this Agreement shall be amended *mutatis mutandis* to give effect to the survival of those provisions for the benefit of the Pre-Petition Agent and the Pre-Petition Lenders.

Section 11.6 Limitation of Liability for Certain Damages. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). Each of Holdings and the

Borrower hereby waives, releases and agrees (and shall cause each other Loan Party to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 11.7 Lender-Creditor Relationship. The relationship between the Lenders and the Administrative Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of lender and creditor. No Secured Party has any fiduciary relationship or duty to any Loan Party arising out of or in connection with, and there is no agency, tenancy or joint venture relationship between the Secured Parties and the Loan Parties by virtue of, any Loan Document or any transaction contemplated therein.

Section 11.8 Right of Setoff. Each of the Administrative Agent, each Lender and each Affiliate (including each branch office thereof) of any of them is hereby authorized, without notice or demand (each of which is hereby waived by Holdings and the Borrower), at any time and from time to time during the continuance of any Event of Default and to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (whether general or special, time or demand, provisional or final) at any time held and other Indebtedness, claims or other obligations at any time owing by the Administrative Agent, such Lender or any of their respective Affiliates to or for the credit or the account of Holdings or the Borrower against any Obligation of any Loan Party now or hereafter existing, whether or not any demand was made under any Loan Document with respect to such Obligation and even though such Obligation may be unmaturing. Each of the Administrative Agent and the Lenders agrees promptly to notify the Borrower and the Administrative Agent after any such setoff and application made by such Lender or its Affiliates; provided, however, that the failure to give such notice shall not affect the validity of such setoff and application. The rights under this Section 11.8 are in addition to any other rights and remedies (including other rights of setoff) that the Administrative Agent and the Lenders and their Affiliates and other Secured Parties may have.

Section 11.9 Sharing of Payments, Etc. If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation from any Loan Party (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or “proceeds” (as defined under the applicable UCC) of Collateral) other than pursuant to Sections 2.16 (Breakage Costs; Increased Costs; Capital Requirements), 2.17 (Taxes) and 2.18 (Substitution of Lenders) and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, the Administrative Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Secured Parties such participations in their Obligations as necessary for such Lender to share such excess payment with such Secured Parties to ensure such payment is applied as though it had been received by the Administrative Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrower, applied to repay the Obligations in accordance herewith); provided, however, that (a) if such payment is rescinded or otherwise recovered from such Lender in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender without interest and (b) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 11.10 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any property in favor of any Loan Party or any other party or

against or in payment of any Obligation. To the extent that any Secured Party receives a payment from the Borrower, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

#### Section 11.11 Notices.

(a) Addresses. All notices, demands, requests, directions and other communications required or expressly authorized to be made by this Agreement shall, whether or not specified to be in writing but unless otherwise expressly specified to be given by any other means, be given in writing and (i) addressed to (A) if to Holdings or the Borrower, to SP Newsprint Co., LLC, 80 Field Point Road, Greenwich, CT 06830, Attention: Edward D. Sherrick, Tel: (203) 661-3344, Fax: (203) 661-3349, (B) if to the Administrative Agent, to General Electric Capital Corporation, 201 Merritt 7, Norwalk, CT 06851, Attention: Account Manager, Tel: (513) 770-5460, Fax: (203) 229-5643, with copies to General Electric Capital Corporation, 401 Merritt 7, Norwalk, CT 06851, Attention: Corporate Counsel – Corporate Lending, Tel: (203) 229-1800, Fax: (203) 956-4001, and Latham & Watkins LLP, Attention: Richard A. Levy, 233 S. Wacker Drive, Suite 5800, Chicago, Illinois 60606, Tel: (312) 876-7700, Fax: (312) 993-9767 and Attention: Eugene P. Mazzaro, 885 Third Avenue, New York, New York 10022, Tel: (212) 906-1200, Fax: (212) 751-4864, (C) if to Avenue, to (y) [\_\_\_\_] and (z) Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attention: John Bessonette, Tel: (212) 715-9182, Fax: (212) 715-8044 and Attention: Douglas Mannal, Tel: (212) 715-9313, Fax: (212) 715-8000, and (D) otherwise to the party to be notified at its address specified opposite its name on Schedule II or on the signature page of any applicable Assignment, (ii) posted to Intralinks<sup>®</sup> (to the extent such system is available and set up by or at the direction of the Administrative Agent prior to posting) in an appropriate location by uploading such notice, demand, request, direction or other communication to www.intralinks.com, faxing it to 866-545-6600 with an appropriate bar-coded fax coversheet or using such other means of posting to Intralinks<sup>®</sup> as may be available and reasonably acceptable to the Administrative Agent prior to such posting, (iii) posted to any other E-System set up by or at the direction of the Administrative Agent in an appropriate location or (iv) addressed to such other address as shall be notified in writing (A) in the case of the Borrower and the Administrative Agent, to the other parties hereto and (B) in the case of all other parties, to the Borrower and the Administrative Agent. Transmission by electronic mail (including E-Fax, even if transmitted to the fax numbers set forth in clause (i) above) shall not be sufficient or effective to transmit any such notice under this clause (a) unless such transmission is an available means to post to any E-System.

(b) Effectiveness. All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one Business Day after delivery to such courier service, (iii) if delivered by mail, when deposited in the mails, (iv) if delivered by facsimile (other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the date of such posting in an appropriate location and the date access to such posting is given to the recipient thereof in accordance with the standard procedures applicable



to such E-System; provided, however, that no communications to the Administrative Agent pursuant to Article II or Article X shall be effective until received by the Administrative Agent.

(c) Distributions to Lenders. The Administrative Agent (solely in its capacity as Administrative Agent and not as a Lender), agrees to use commercially reasonable efforts to distribute to the other Lenders any notices or documentation received in its capacity as Administrative Agent from Borrower, the Brant Parties or any of the Debtors by posting such documents to the E-System or to the Lenders by E-Mail; provided, however, that the Lenders hereby agree that the Administrative Agent assumes and accepts no liability for failure to provide the other Lenders with any such notice or document and the Lenders agree to not bring any claim related to any such failure against the Administrative Agent, its successors or assigns.

#### Section 11.12 Electronic Transmissions.

(a) Authorization. Subject to the provisions of Section 11.11(a), each of the Administrative Agent, the Borrower, the Lenders and each of their Related Persons is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each of Holdings, the Borrower and each Secured Party hereby acknowledges and agrees, and each of Holdings and the Borrower shall cause each other Group Member to acknowledge and agree, that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) Signatures. Subject to the provisions of Section 11.11(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a “signature” and (C) each such posting shall be deemed sufficient to satisfy any requirement for a “writing”, in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which each Secured Party and Loan Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party’s or beneficiary’s right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 11.11 and this Section 11.12, separate terms and conditions posted or referenced in such E-System and related Contractual Obligations executed by Secured Parties and Group Members in connection with the use of such E-System.

(d) Limitation of Liability. All E-Systems and Electronic Transmissions shall be provided “as is” and “as available”. None of Administrative Agent or any of its Related Persons warrants the accuracy, adequacy or completeness of any E-Systems or Electronic Transmission, and each disclaims all liability for errors or omissions therein. No Warranty of any kind is made by the Administrative Agent or any of its Related Persons in connection with any E-Systems or Electronic Transmission, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. Each of Holdings, the Borrower and each Secured Party agrees (and each of Holdings and the Borrower shall cause each other Loan Party to agree) that the Administrative Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

Section 11.13 Governing Law. This Agreement, each other Loan Document that does not expressly set forth its applicable law, and the rights and obligations of the parties hereto and thereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

Section 11.14 Jurisdiction.

(a) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document may be brought in the Bankruptcy Court or if, the Bankruptcy Court does not have or does not exercise jurisdiction, the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, each of Holdings and the Borrower hereby accepts for itself and in respect of its property, generally and unconditionally, the sole and exclusive jurisdiction of the aforesaid courts. The parties hereto (and, to the extent set forth in any other Loan Document, each other Loan Party) hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(b) Service of Process. Each of Holdings and Borrower (and, to the extent set forth in any other Loan Document, each other Loan Party) hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrower specified in Section 11.11 (and shall be effective when such mailing shall be effective, as provided therein). Each of Holdings and the Borrower (and, to the extent set forth in any other Loan Document, each other Loan Party) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Non-Exclusive Jurisdiction. Nothing contained in this Section 11.14 shall affect the right of the Administrative Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against any Loan Party in any other jurisdiction.

Section 11.15 Waiver of Jury Trial. Each party hereto hereby irrevocably waives trial by jury in any suit, action or proceeding with respect to, or directly or indirectly arising out of, under or in connection with, any Loan Document or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory). Each party hereto (A) certifies that no other party and no Related Person of any other party has represented, expressly or otherwise, that such other party 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 the Loan Documents, as applicable, by the mutual waivers and certifications in this Section 11.15.

Section 11.16 Severability. Any provision of any Loan Document being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of any Loan Document or any part of such provision in any other jurisdiction.

Section 11.17 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

Section 11.18 Entire Agreement. The Loan Documents embody the entire agreement of the parties and supersede all prior agreements and understandings relating to the subject matter thereof and any prior letter of interest, commitment letter, fee letter, confidentiality and similar agreements involving any Loan Party and any of the Administrative Agent or any Lender or any of their respective Affiliates relating to a financing of substantially similar form, purpose or effect. In the event of any conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall govern (unless such terms of such other Loan Documents are necessary to comply with applicable Requirements of Law, in which case such terms shall govern to the extent necessary to comply therewith).

Section 11.19 Use of Name. Each of Holdings and the Borrower agrees, and shall cause each other Loan Party to agree, that it shall not, and none of its Affiliates shall, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of the Securities of any Loan Party) using the name, logo or otherwise referring to GE Capital or of any of its Affiliates, the Loan Documents or any transaction contemplated therein to which the Secured Parties are party without at least 2 Business Days' prior notice to GE Capital and without the prior consent of GE Capital except to the extent required to do so under applicable Requirements of Law and then, only after consulting with GE Capital prior thereto.

Section 11.20 Non-Public Information; Confidentiality. (a) Each Lender acknowledges and agrees that it may receive material non-public information hereunder concerning the Loan Parties and their Affiliates and Securities and agrees to use such information in compliance with all relevant policies, procedures and Contractual Obligations and applicable Requirements of Laws (including United States federal and state security laws and regulations).

(b) Each Lender and the Administrative Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information

obtained by it pursuant to any Loan Document and designated in writing by any Loan Party as confidential, except that such information may be disclosed (i) with the Borrower's consent, (ii) to Related Persons of such Lender or the Administrative Agent, as the case may be, that are advised of the confidential nature of such information and are instructed to keep such information confidential, (iii) to the extent such information presently is or hereafter becomes available to such Lender or the Administrative Agent, as the case may be, on a non-confidential basis from a source other than any Loan Party, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority, (v) to the extent necessary or customary for inclusion in league table measurements or in any tombstone or other advertising materials (and the Loan Parties consent to the publication of such tombstone or other advertising materials by the Administrative Agent, any Lender or any of their Related Persons), (vi) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency or otherwise to the extent consisting of general portfolio information that does not identify borrowers, (vii) to current or prospective assignees, SPVs grantees of any option described in Section 11.2(f) or participants, direct or contractual counterparties to any Hedging Agreement permitted hereunder and to their respective Related Persons, in each case to the extent such assignees, participants, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 11.20, (viii) to the extent permitted by Section 11.20(c) below, and (ix) in connection with the exercise of any remedy under any Loan Document. In the event of any conflict between the terms of this Section 11.20 and those of any other Contractual Obligation entered into with any Loan Party (whether or not a Loan Document), the terms of this Section 11.20 shall govern.

(c) The Borrower agrees, and shall cause each Debtor to agree, that each Lender, each Secured Party and the Administrative Agent may disclose any Debtor Diligence Information to (i) any current or prospective assignees or participants, (ii) any potential purchaser or purchasers of all or substantially all of the Debtor's assets, including without limitation, any purchaser or purchasers being financed by GE Capital or any of its Affiliates, (iii) any potential assignee or transferee of, or investor in, the Purchaser or any proposed purchaser or purchasers of all or substantially all of the Debtors' assets or (iv) any potential investor or co-investor with any Lender or any Secured Party in any transaction contemplated by this Agreement, the Loan Documents and the Interim Order or the Final Order, as applicable, in each case, including any Person that is not a Lender or Secured Party or an Affiliate of any Lender or Secured Party, to the extent that each such Person that receives such Debtor Diligence Information pursuant to this Section 11.20(c) shall have agreed to be bound by provisions substantially similar to the provisions of this Section 11.20 or other confidentiality provisions reasonably acceptable to the Borrower, the Administrative Agent and the Required Lenders.

Section 11.21 Patriot Act Notice. Each Lender subject to the USA Patriot Act of 2001 (31 U.S.C. §§ 5318 et seq.) hereby notifies the Borrower that, pursuant to Section 326 thereof, it is required to obtain, verify and record information that identifies the Borrower, including the name and address of the Borrower and other information allowing such Lender to identify the Borrower in accordance with such act.

Section 11.22 Releasing and Released Parties. The Borrower and each Guarantor hereby acknowledge, effective upon entry of the Interim Order, that the Borrower and such Guarantor and any of their respective Subsidiaries have no defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Borrower's or such Guarantor's or their

respective Subsidiaries' liability to repay the Administrative Agent or any Lender as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from the Administrative Agent or any Lender (in their respective capacities as such). The Borrower and each Guarantor, in each case on behalf of their respective bankruptcy estates, and on behalf of all their respective successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through the Borrower or such Guarantor (collectively, the "Releasing Parties"), hereby fully, finally and forever releases and discharges the Secured Parties (solely in their respective capacities as such and not as Pre-Petition Secured Parties) and all of the Secured Parties' past and present officers, directors, servants, agents, attorneys, other professionals, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them (collectively, the "Released Parties") of and from any and all past and present actions, causes of action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Interim Order, the Final Order, and the transactions contemplated thereby and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing.

Section 11.23 Parties Including Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon each Loan Party, the estate of each Debtor, and any trustee, other estate representative or any successor in interest of any Debtor in any Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Administrative Agent and Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of any Case or any other bankruptcy case of any Loan Party to a case under Chapter 7 of the Bankruptcy Code or in the event of dismissal of any Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Administrative Agent file financing statements or otherwise perfect its Liens under applicable law. No Loan Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Administrative Agent and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by any Loan Party without the prior express written consent of the Administrative Agent and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Loan Party, Administrative Agent and Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents; provided, that, notwithstanding the foregoing, the Pre-Petition Agent and the Pre-Petition Lenders shall be third

party beneficiaries of any of the terms and provisions of this Agreement that benefit or protect the interests of the Pre-Petition Agent and the Pre-Petition Lenders, including without limitation, Sections 1.5, 11.1 and 11.23 and Articles IV, V, VI, VII, VIII or IX hereunder, and any provision that requires the consent of the Pre-Petition Agent or the Pre-Petition Lenders.

Section 11.24 No Implied Waivers. Except as expressly provided in any Loan Document, this Agreement is limited as written and is not a consent to any other modification of any term or condition of any Loan Document, each of which shall remain in full force and effect.

[SIGNATURE PAGES FOLLOW]

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

SP NEWSPRINT CO., LLC, AS BORROWER

By: \_\_\_\_\_  
Name:  
Title:

SP NEWSPRINT HOLDINGS LLC, AS  
GUARANTOR

By: \_\_\_\_\_  
Name:  
Title:

SP RECYCLING CORPORATION, AS  
GUARANTOR

By: \_\_\_\_\_  
Name:  
Title:

SEP TECHNOLOGIES, L.L.C., AS  
GUARANTOR

By: \_\_\_\_\_  
Name:  
Title:

GENERAL ELECTRIC CAPITAL  
CORPORATION  
AS ADMINISTRATIVE AGENT, AND  
LENDER

By: \_\_\_\_\_  
Name:  
Title:



OTHER LENDERS:

AVENUE INVESTMENTS, LP

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

Name:

Title:

[NAME OF LENDER]

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

Name:

Title:

**EXHIBIT B**

**Proposed Form of Interim Order**

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

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In re:	)	) Chapter 11
	)	
SP NEWSPRINT HOLDINGS LLC, <u>et al.</u> , <sup>1</sup>	)	) Case No. 11-13649 (CSS)
	)	
Debtors.	)	) (Jointly Administered)
	)	) <b>Re: Docket Nos. []</b>
	)	)
	)	)

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**INTERIM ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364 AND 507 AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363; (II) GRANTING LIENS AND SUPER-PRIORITY CLAIMS; (III) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

SP Newsprint Co., LLC (f/k/a SP Newsprint Merger LLC) (the “*Borrower*”) and certain of its affiliates, each as a debtor and debtor-in-possession (collectively, the “*Debtors*”) in the above captioned chapter 11 cases (collectively, the “*Cases*”) having filed a motion, dated December [ ], 2011 (the “*Motion*”) requesting entry of an interim order (together with the exhibits thereto, the “*Interim Order*”) and a final order (together with the exhibits thereto, the “*Final Order*”) pursuant to sections 105, 361, 362, 363, 364, and 507 of chapter 11 of title 11 of the United States Code (as amended, the “*Bankruptcy Code*”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”) seeking, among other things:

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each of the Debtors’ tax identification numbers, are: SP Newsprint Holdings, LLC (6180); SP Newsprint Co. LLC (7779); SP Recycling Corporation (2936); and SEP Technologies, L.L.C. (2955).

(i) authorization for the Borrower to obtain post-petition financing (the “**DIP Facility**”), and for certain of the Borrower’s affiliates and each subsidiary of the Borrower that is party to the DIP Credit Agreement (as defined below) (collectively, the “**Guarantors**”), to guaranty the Borrower’s obligations in connection with the DIP Facility, up to the aggregate principal amount of \$20,000,000, which may be increased by up to an additional \$5,000,000 as provided herein and in the DIP Credit Agreement (as defined below) (the “**DIP Loan Amount**”) from General Electric Capital Corporation (“**GE Capital**”), acting as administrative agent (in such capacity, the “**DIP Agent**”), for itself and certain other lenders (collectively, including GE Capital, the “**DIP Lenders**”) and any other Secured Parties (as defined in the DIP Credit Agreement, and together with the DIP Agent and DIP Lenders, the “**DIP Secured Parties**”);

(ii) approval of the terms of, and authorization for the Debtors to execute and perform under, that certain Senior Secured Priming and Super-Priority Debtor-In-Possession Credit Agreement, substantially in the form of the draft attached as Exhibit [ ] to the Motion (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**DIP Credit Agreement**”),<sup>2</sup> and the other Loan Documents (as defined in the DIP Credit Agreement and, together with the DIP Credit Agreement, the “**DIP Loan Documents**”) and to perform such other and further acts as may be required in connection with the DIP Loan Documents;

(iii) authorization for the Debtors to grant (x) to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, the DIP Liens (as defined below) on all of the DIP Collateral (as defined below) pursuant to section 364(c)(2), (c)(3) and (d) of the Bankruptcy Code, which DIP Liens shall be senior to the Primed Liens (as defined below) but shall be junior

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<sup>2</sup> Unless otherwise specified, all capitalized terms used herein without definition shall have the respective meanings given such terms in the DIP Credit Agreement.

to any Permitted Prior Liens (as defined below) and (y) to the DIP Agent and the other DIP Secured Parties, pursuant to section 364(c)(1) of the Bankruptcy Code, super-priority administrative claims having recourse to all pre-petition and post-petition property of the Debtors' estates, now owned or hereafter acquired, including, solely upon entry of the Final Order (as defined below), proceeds ("**Avoidance Action Proceeds**") of the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, 552 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law ("**Avoidance Actions**"), whether received by judgment, settlement or otherwise, and any Debtors' rights under section 506(c) of the Bankruptcy Code and the proceeds thereof, in each case subject and subordinate to the Carve-Out (as defined below) or any claims covered by the Carve-Out (subject to the Carve-Out Cap (as defined below) and other limitations set forth herein), as applicable;

(iv) authorization for the Debtors to use "cash collateral," as such term is defined in section 363 of the Bankruptcy Code (the "**Cash Collateral**"), including Cash Collateral in which the Pre-Petition Secured Parties (as defined below) and/or the DIP Secured Parties have a lien or other interest, in each case whether existing as of the Petition Date (as defined below), arising pursuant to this Interim Order or otherwise;

(v) authorization for the Debtors to grant, as of the Petition Date and as further described below, certain adequate protection to each lender (collectively, the "**Pre-Petition Lenders**"), the Pre-Petition Agent (as defined below) and the other Secured Parties (as defined in the Pre-Petition Credit Agreement, and together with the Pre-Petition Agent and Pre-Petition Lenders, the "**Pre-Petition Secured Parties**") under a senior secured credit facility that includes a letter of credit sub-facility and a swingline sub-facility (the "**Pre-Petition Credit**

*Facility*”) pursuant to that certain Credit Agreement, dated as of March 31, 2008 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “*Pre-Petition Credit Agreement*” and, together with all other loan and security documents executed in connection therewith, the “*Pre-Petition Credit Documents*”), by and among the Borrower, SP Newsprint Holdings LLC (“*Holdings*”), the other Loan Parties party thereto, GE Capital as Pre-Petition Lender and administrative agent (the “*Pre-Petition Agent*”), and the other Pre-Petition Lenders and L/C Issuers as parties thereto;

(vi) to vacate the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order and subject in all respects to the Debtors’ rights under paragraph 18 herein;

(vii) authorization for the Debtors, at any time prior to the entry of the Final Order, to borrow an amount not to exceed \$12 million under the DIP Facility for the purposes of funding the Cases and the operations of the Debtors’ business, all subject to, and in accordance with, the DIP Loan Documents, this Interim Order and the Approved Budget (as defined below);

(viii) the scheduling of a final hearing (the “*Final Hearing*”) to be held before this Court (as defined below) to consider entry of the Final Order approving (a) the DIP Facility as set forth in the DIP Credit Agreement in the aggregate principal amount of \$20,000,000, which may be increased, without any associated fees, by up to an additional \$5,000,000 as provided herein and in the DIP Credit Agreement, to be used by the Debtors for the purpose of (a) funding the operations of the Debtors’ business and paying other costs and expenses of administration of the Cases in accordance with the DIP Loan Documents, the Final Order and the

Approved Budget and (b) the grant of adequate protection to the Pre-Petition Agent and the other Pre-Petition Secured Parties all on a final basis as set forth in the Motion; and

(ix) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of this Interim Order.

Having considered the Motion, the DIP Credit Agreement, the *Declaration of Alan D. Holtz in Support of Debtors' DIP Motion* (the "**Holtz Declaration**"), and the evidence submitted or proffered at the hearing held and concluded before this Court on December \_\_, 2011 (the "**Interim Hearing**"); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d) and 9014 and all applicable Local Rules, notice of the Motion and the Interim Hearing having been provided in a sufficient manner; and it appearing that approval of the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, a sound and prudent exercise of the Debtors' business judgment, and is essential for maximizing the value of the Debtors' business and assets for the benefit of the Debtors' creditors and all parties in interest; and upon the record of these Cases; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED,<sup>3</sup> that:**

A. **Bankruptcy Cases**. On November 15, 2011 (the "**Petition Date**"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (this "**Court**"). The Debtors have continued in the management and operation of their business and properties as debtors-in-

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On November 17, 2011, this Court entered an order [ECF No. 57] directing the joint administration of these Cases. On November 17, 2011, this Court entered the *Interim Order Approving Debtors' Motion for Order (I) Authorizing use of Cash Collateral, (II) Granting Adequate Protection to Pre-Petition Secured Lenders, and (III) Granting Related Relief* [ECF No. 54] (the “**Interim Cash Collateral Order**”). On November 16, 2011, the Debtors filed an application (the “**AP Services Application**”) [ECF No. 25] seeking to employ and to retain AP Services, LLC, as crisis managers, and to appoint certain officers as interim managers for the Debtors on terms and conditions satisfactory to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders. On December 1, 2011, the Debtors filed the *Notice of Filing of Amended Budget For Extension of Interim Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection to Pre-Petition Secured Lenders, and (III) Granting Related Relief* [ECF No. 120]. The AP Services Application was approved by this Court on December 8, 2011 [ECF No. 168] (the order approving such application will be modified by, and subject to, this Interim Order (the “**CRO Order**”). On December 9, 2011, the Debtors filed the *Notice of Filing of Second Amended Budget for Extension of Interim Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection to Pre-Petition Secured Lenders, and (III) Granting Related Relief* [ECF No. 174]. On November 29, 2011, the United States Trustee appointed a statutory committee of unsecured creditors (the “**Committee**”). No trustee or examiner has been appointed in the Cases.

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



U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004 and 9014.

C. **Notice.** The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors or their agent, whether by facsimile, electronic mail, overnight courier or hand delivery, on December [\_\_\_], 2011, to certain parties in interest, including: (a) the Office of the United States Trustee for the District of Delaware, (b) Lowenstein Sandler PC, as proposed counsel to the Committee, (c) GE Capital as Pre-Petition Agent and DIP Agent, (d) Latham & Watkins, LLP, as counsel to the Pre-Petition Agent and the DIP Agent, (e) Kramer Levin Naftalis & Frankel LLP, as counsel to Avenue Investments, LP (“*Avenue*”), (f) the Internal Revenue Service, (g) the Securities and Exchange Commission, (h) the United States Attorney for the District of Delaware, and (i) any other parties that have filed notices of appearance and requested service of pleadings in these Cases under Bankruptcy Rule 2002. Under the circumstances, such notice of the Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rule 4001(b), (c) and (d) and the Local Rules.

D. **Debtors’ Stipulations Regarding the Pre-Petition Credit Facilities.** Without prejudice to the rights of parties in interest to the extent set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge and agree (paragraphs D(i) through D(v) hereof shall be referred to herein collectively as the “*Debtors’ Stipulations*”) as follows:

(i) **Pre-Petition Credit Facility.** Pursuant to the Pre-Petition Credit Agreement, the Pre-Petition Agent and other Pre-Petition Secured Parties extended loans to, and issued letters of credit for the account of, the Debtors, from time to time in connection with the

Pre-Petition Credit Facility. All obligations of the Debtors arising under the Pre-Petition Credit Facility (including the “Obligations” as defined in the Pre-Petition Credit Agreement) shall collectively be referred to herein as the “*Pre-Petition Credit Obligations.*”

(ii) Pre-Petition Credit Obligations. As of the Petition Date, the Debtors were indebted to the Pre-Petition Agent and the other Pre-Petition Secured Parties pursuant to the Pre-Petition Credit Documents, without defense, counterclaim or offset of any kind, in respect of loans made and letters of credit issued by the Pre-Petition Agent and the other Pre-Petition Secured Parties in the aggregate principal amount of not less than (A) \$40,311,511.82 in respect of Revolving Loans (as defined in the Pre-Petition Credit Agreement), (B) \$2,525,000.00 in undrawn available amounts under the letter of credit sub facility and (C) \$212,901,136.50 in respect of Term Loans (as defined in the Pre-Petition Credit Agreement) *plus* all accrued and unpaid interest thereon and any additional fees and expenses (including any attorneys’, financial advisors’ and other professionals’ fees and expenses that are chargeable or reimbursable under the Pre-Petition Credit Documents) now or hereafter due under the Pre-Petition Credit Agreement and the other Pre-Petition Credit Documents.

(iii) Pre-Petition First Priority Liens and Collateral. Pursuant to the Pre-Petition Credit Documents, the Debtors granted to the Pre-Petition Agent, for the benefit of itself and the other Pre-Petition Secured Parties, to secure the Pre-Petition Credit Obligations, a first-priority security interest in and continuing lien (the “*Pre-Petition First Priority Liens*”) on all or substantially all of the Debtors’ assets and property (which for the avoidance of doubt includes Cash Collateral and “Collateral” as defined in the Pre-Petition Credit Agreement) and all proceeds, products, accessions, rents and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (the “*Pre-Petition Collateral*”). As of the Petition Date,

the Pre-Petition First Priority Liens (a) are legal, valid, binding, enforceable, non-avoidable and perfected liens, (b) were granted to, or for the benefit of, the Pre-Petition Secured Parties for fair consideration and reasonably equivalent value and (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein). The Pre-Petition First Priority Liens are subject and subordinate in all respects only to (A) the DIP Liens, (B) the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein) and (C) valid, prior, perfected and non-avoidable Permitted Liens (as defined in the Pre-Petition Credit Agreement) permitted under the Pre-Petition Credit Documents, only to the extent such liens were senior to the Pre-Petition First Priority Liens (after giving effect to any applicable intercreditor or subordination agreement) (the “*Permitted Prior Liens*”).<sup>4</sup> The Pre-Petition Credit Obligations and the Pre-Petition Credit Documents constitute legal, valid and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Pre-Petition Credit Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code). No setoffs, recoupments, offsets, defenses or counterclaims to any of the Pre-Petition Credit Obligations exist and no portion of the Pre-Petition Credit Obligations or any payments made to any or all of the Pre-Petition Agent or the other Pre-Petition Secured Parties are subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Each of the guaranties provided pursuant to the Pre-

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<sup>4</sup> For purposes of this Interim Order, Permitted Prior Liens shall include any liens that were valid, senior, enforceable, prior, perfected and non-avoidable under applicable law as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such liens are valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtors, the Pre-Petition Agent, the Pre-Petition Secured Parties, the DIP Agent, the DIP Secured Parties and any Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such liens and/or security interests.

Petition Credit Documents continues in full force and effect notwithstanding any use of Cash Collateral permitted hereunder or any financing and financial accommodations extended by the DIP Agent or other DIP Secured Parties to the Debtors pursuant to the terms of this Interim Order or the DIP Loan Documents.

(iv) Cash Collateral. The Debtors represent that all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether Pre-Petition Collateral or proceeds thereof, constitutes the Cash Collateral of the Pre-Petition Agent and the other Pre-Petition Secured Parties.

(v) Release of Claims. Subject to the reservation of rights set forth in paragraph 7 below, each Debtor and its estate shall be deemed to have forever waived, discharged, and released the Pre-Petition Agent and the other Pre-Petition Secured Parties, together with their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives (all of the foregoing, collectively, the "***Pre-Petition Secured Party Releasees***") of any and all "claims" (as defined in the Bankruptcy Code), actions, counterclaims, causes of action, proceedings, defenses, setoff, recoupment, or other offset rights against any and all of the Pre-Petition Secured Party Releasees, whether arising at law or in equity, to the extent relating to the Pre-Petition Credit Obligations and the Pre-Petition First Priority Liens, including, with respect to the Pre-Petition Credit Obligations and the Pre-Petition First Priority Liens (a) any recharacterization, subordination, avoidance, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code, or under any other similar provisions of applicable state or federal law, and (b) any right or basis to challenge or object to the amount, validity, characterization or enforceability of the Pre-Petition

Credit Obligations, or the validity, characterization, enforceability, priority, or non-avoidability of the Pre-Petition First Priority Liens.

E. **Findings Regarding the DIP Facility.**

(i) **Need for Post-Petition Financing.** As set forth in the Holtz Declaration and based upon the record presented to the Court at the Interim Hearing, the Debtors have an immediate need to obtain the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of the operation of their business, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, and to satisfy other working capital and operational needs, and to facilitate the orderly disposition of the Debtors' business through a sale of all or substantially all of the Debtors' assets. The Debtors' access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to maximizing the value of the Debtors' assets and business for the benefit of the Debtors' creditors and parties in interest.

(ii) **No Credit Available on More Favorable Terms.** As set forth in the Holtz Declaration and based upon the record presented to the Court at the Interim Hearing, under the circumstances, the Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents. The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without (A) granting to the DIP Secured Parties the rights, remedies, privileges, benefits and protections provided herein and in the DIP Loan Documents, including the DIP Liens and the DIP Super-Priority Claims (as defined below), (B) allowing certain of the Pre-Petition Secured Parties to provide the DIP

Facility on the terms set forth herein and in the DIP Loan Documents (all of the foregoing described in clauses (A) and (B) above, including the DIP Liens and the DIP Super-Priority Claims, collectively, the “*DIP Protections*”), and (C) providing the Pre-Petition Agent and the other Pre-Petition Secured Parties the adequate protection herein as more fully described and provided for in paragraph 4 below.

(iii) Application of Collateral Proceeds. As a condition to the entry into the DIP Loan Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral and other Pre-Petition Collateral, the Debtors have agreed that, as of and commencing on the date of entry of this Interim Order, the Debtors shall apply Cash Collateral, the proceeds of DIP Collateral, the proceeds of Pre-Petition Collateral and the proceeds of the DIP Facility as set forth in paragraph 2 below.

F. Adequate Protection for, and Good Faith of, the Pre-Petition Agent and the other Pre-Petition Secured Parties. The Pre-Petition Agent and other Pre-Petition Secured Parties have negotiated in good faith regarding the Debtors’ use of the Pre-Petition Collateral (including the Cash Collateral) to fund the administration of the Debtors’ estates and continued operation of their business. The Pre-Petition Agent and the Pre-Petition Required Lenders have agreed to permit the Debtors to use the Pre-Petition Collateral, including the Cash Collateral, subject to the terms and conditions set forth herein, including the protections afforded a party acting in “good faith” under section 364(e) of the Bankruptcy Code. In addition, the DIP Facility contemplated hereby provides for a consensual priming of the Pre-Petition First Priority Liens pursuant to section 364(d) of the Bankruptcy Code. The Pre-Petition Agent and the other Pre-Petition Secured Parties are entitled to the adequate protection as set forth herein pursuant to sections 361, 362, 363, 364 and 507(b) of the Bankruptcy Code for any diminution in value of

the Pre-Petition Collateral from the Petition Date. Based upon the Holtz Declaration and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of the Cash Collateral contemplated hereby are fair and reasonable, reflect the Debtors' sound and prudent exercise of their business judgment, and constitute reasonably equivalent value and fair consideration for the Pre-Petition Agent's and the Pre-Petition Required Lenders' consent thereto.

G. **Limited Consent.** In accordance with the provisions of the Pre-Petition Credit Agreement, the Pre-Petition Agent and the Pre-Petition Lenders constituting "Required Lenders" (as defined in the Pre-Petition Credit Agreement) (the "***Pre-Petition Required Lenders***") have consented to the priming of the Pre-Petition Secured Parties' liens under the Pre-Petition Credit Documents by the DIP Liens pursuant to the DIP Loan Documents, and such consent is binding upon all Pre-Petition Secured Parties. The consent of the Pre-Petition Agent and the other Pre-Petition Secured Parties to the priming of their liens by the DIP Liens is limited to the DIP Facility presently before this Court, with GE Capital as DIP Agent, and shall not, and shall not be deemed to, extend to any other post-petition financing (including any refinancing of the DIP Facility) or to any modified version of this DIP Facility with any party other than GE Capital as DIP Agent. Nothing in this Interim Order, including any of the provisions herein with respect to adequate protection, shall constitute, or be deemed to constitute, a finding that the interests of any of the Pre-Petition Agent or the other Pre-Petition Secured Parties are or will be adequately protected with respect to any non-consensual use of Cash Collateral or non-consensual priming of the Pre-Petition First Priority Liens.

H. **Section 552.** In light of the subordination of their liens and super-priority administrative claims (i) in the case of the DIP Secured Parties, to the Carve-Out and the

Permitted Prior Liens, and (ii) in the case of the Pre-Petition Secured Parties, to the Carve-Out, the DIP Liens and the Permitted Prior Liens, each of the DIP Secured Parties and the Pre-Petition Secured Parties is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the “equities of the case” exception shall not apply.

I. **Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The DIP Lenders have indicated a willingness to provide post-petition secured financing pursuant to the DIP Facility to the Debtors in accordance with the DIP Loan Documents and this Interim Order.

(ii) The terms and conditions of the DIP Facility pursuant to the DIP Loan Documents and this Interim Order, and the fees paid and to be paid thereunder, are fair, reasonable, and the best available under the circumstances, reflect the Debtors’ exercise of sound and prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

(iii) The DIP Facility and DIP Loan Documents were negotiated in good faith and at arm’s length among the Debtors, the DIP Agent and the other DIP Secured Parties with the assistance and counsel of their respective advisors, and all of the DIP Obligations shall be deemed to have been extended by the DIP Secured Parties and their affiliates for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Liens, the DIP Super-Priority Claims and the other DIP Protections shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event this Interim



Order or any other order or any provision hereof or thereof is vacated, reversed, amended or modified, on appeal or otherwise.

J. **Relief Essential; Best Interests.** For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtors' business, assets and estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral in accordance with this Interim Order and the DIP Loan Documents is therefore in the best interests of the Debtors' estates and consistent with the Debtors' fiduciary duties.

**NOW, THEREFORE,** on the record before this Court and with the consent or non-objection of the Debtors, the Pre-Petition Agent, the other Pre-Petition Secured Parties, the DIP Agent and the other DIP Secured Parties to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The Motion is granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Loan Documents. This Interim Order shall become effective immediately upon its entry. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are denied and overruled.

2. **DIP Loan Documents and DIP Protections.**

(a) **Approval of DIP Loan Documents.** The Debtors are expressly and immediately authorized to establish the DIP Facility, to execute, deliver and perform under the DIP Loan Documents and to incur the DIP Obligations (as defined below) in accordance with,

and subject to, the terms of this Interim Order and the DIP Loan Documents, and to execute, deliver and perform under all other instruments, certificates, agreements and documents which may be required or necessary for the performance by the applicable Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in, and provided for by, this Interim Order and the DIP Loan Documents. The Debtors are hereby authorized, and, upon execution of the DIP Credit Agreement, directed, to do and perform all acts and pay the principal, interest, fees, expenses and other amounts described in the DIP Loan Documents as such become due pursuant to the DIP Loan Documents and this Interim Order, including all closing fees, administrative fees, letter of credit fees, commitment fees and reasonable and documented attorneys', financial advisors' and other professionals' fees, costs and expenses arising under the DIP Loan Documents and this Interim Order, which amounts shall not be subject to further approval of this Court and shall be non-refundable; provided, however, that the payment of the fees and expenses of the Lender Professionals (as defined below) incurred after the Closing Date shall be subject to the provisions of paragraph 21(a). Upon their execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the applicable Debtors enforceable against such Debtors in accordance with their terms. Each Responsible Officer of a Debtor acting singly is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive of their respective authority to act in the name of and on behalf of the Debtors.

(b) DIP Obligations. For purposes of this Interim Order, the term “***DIP Obligations***” shall mean all amounts owing under the DIP Credit Agreement and other DIP Loan Documents (including all “Obligations” as defined in the DIP Credit Agreement) and shall include the principal of, interest on and fees, costs, expenses and other charges owing in respect

of, such amounts (including any reasonable and documented attorneys', financial advisors' and other professionals' fees, costs and expenses that are chargeable or reimbursable under the DIP Loan Documents, subject to paragraph 21(a) hereof), and any obligations in respect of indemnity and reimbursement claims, whether contingent or otherwise. Upon the written consent of the DIP Agent and the DIP Lenders, and subject to paragraph 2(c) below, the Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to increase the DIP Loan Amount by an amount not to exceed \$5,000,000. In addition, the DIP Loan Amount shall automatically increase, without the need for any consent, on a dollar-for-dollar basis, for (i) any fees and/or expenses incurred by the DIP Secured Parties and the Pre-Petition Secured Parties (including the reasonable and documented fees, costs and expenses of their respective legal, financial and other professional advisors) and reimbursed by the Debtors in excess of \$5,000,000 in the aggregate, solely for the purpose of paying such fees and expenses, and (ii) any interest payment made in accordance with paragraph 4(d) herein, solely for the purpose of paying such interest.

(c) Authorization to Incur DIP Obligations. To enable the Debtors to continue to operate their business, during the period from the entry of this Interim Order through and including the earlier of (i) any Termination Declaration Date and (ii) the date of entry of the Final Order (the "*Interim Period*"), subject to the terms and conditions of this Interim Order, the DIP Loan Documents and the Approved Budget, the Debtors are hereby authorized to borrow under and pursuant to the terms of the DIP Facility in an aggregate outstanding principal amount not to exceed \$12,000,000. All DIP Obligations shall be unconditionally guaranteed by the Guarantors, as further provided in the DIP Loan Documents.

(d) Approved Budget. Attached hereto as Exhibit A is a four-week cash flow budget (as such budget may be subsequently amended, modified or supplemented with the approval of the DIP Agent and the Required Lenders (as defined in the DIP Credit Agreement, the “*DIP Required Lenders*”) and the Pre-Petition Agent and the Pre-Petition Required Lenders, the “*Initial Approved Budget*”) which reflects, on a line-item basis for the four-week period commencing on the date of entry of this Interim Order, the Debtors’ projected cash receipts and disbursements (including ordinary course operating expenses, bankruptcy-related expenses under the Cases, capital expenditures and fees and expenses of the DIP Secured Parties and the Pre-Petition Secured Parties (including counsel, financial advisors and other professionals therefor) and any other fees and expenses relating to the DIP Facility), unused availability under the DIP Facility and unrestricted cash on hand. No later than noon (Eastern Time) on January 12, 2012, and every fourth Thursday at noon (Eastern Time) thereafter, the Debtors shall deliver to the DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders and lead counsel to the Committee a four-week cash flow budget in form and substance acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, and approved by Alan D. Holtz in his capacity as Senior Vice President – Restructuring or Chief Restructuring Officer of the Debtors (or another replacement acceptable – and solely in the case of a replacement that is an employee of AlixPartners – reasonably acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, the “*CRO*”), as applicable (each such updated budget, a “*Supplemental Approved Budget*”) without further notice, motion or application to, order of, or hearing before this Court, supplementing and replacing the Initial Approved Budget or a Supplemental Approved Budget, as applicable, then in effect commencing from the beginning of the following week through and including four

weeks thereafter; provided that unless and until the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders have approved of such updated budget, the Debtors shall still be subject to and be governed by the terms of the Initial Approved Budget or Supplemental Approved Budget, as applicable, then in effect and none of the DIP Agent, the Pre-Petition Agent, the other DIP Secured Parties and the other Pre-Petition Secured Parties shall have any obligation to fund any updated budget not constituting a Supplemental Approved Budget or permit the use of Cash Collateral with respect thereto. Without the prior written consent of the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, which may be withheld in their sole discretion, the Approved Budget shall not include any payments to Peter Brant, any of his Family Members (as defined in the Pre-Petition Credit Agreement), or Brant Industries, Inc. (“**Brant Industries**”) or any of its affiliates, officers, directors, stockholders, managers, employees, representatives or agents (collectively, the “**Brant Parties**”); provided, however, that, notwithstanding anything to the contrary in this Interim Order, the Approved Budget shall include a monthly management fee (the “**Cash Monthly Fee**”) equal to the lesser of (i) 2% of the Borrower’s consolidated gross sales for the applicable month (the “**Maximum Monthly Fee**”) and (ii) the sum of (x) \$750,000 (prorated for a partial month) (the “**Monthly Cap**”) plus (y) if applicable, the cumulative unused portion(s) of any prior Monthly Cap(s) subsequent to the Petition Date (the cumulative amount by which the aggregate Maximum Monthly Fees exceeded the aggregate Monthly Caps, the “**Accrued Fee**”) payable to Brant Industries pursuant to the Brant Management Agreement in cash solely for the period commencing on the Petition Date and ending on the earlier of (i) the closing of the 363 Credit Bid Agreement or any Alternate APA to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing, or (ii) the Brant

Management Agreement Rejection Date (as defined below) or such later date on which Brant Industries, the Committee, the Debtors, the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their respective sole discretion; provided, however, that if (i) the Brant Parties have performed and complied with all of their post-petition obligations in all material respects under the Brant Management Agreement, this Interim Order and the Final Order, and (ii) the transactions contemplated by the Credit Bid APA, or any Alternate APA in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders are consummated, then the Accrued Fee shall be paid to Brant Industries at the closing of such transactions (the “**Accrued Fee Payment**”, and the Accrued Fee Payment, to the extent payable, together with the Cash Monthly Fees, the “**Post-Petition Brant Management Fee**”). The aggregate, without duplication, of all items in the Initial Approved Budget and all Supplemental Approved Budgets shall constitute an “**Approved Budget.**” Other than as set forth herein, any amounts payable or accruing under the Brant Management Agreement during the period from and after the Petition Date, other than the Post-Petition Brant Management Fee for the applicable post-petition time period, shall be deemed waived and shall not constitute an administrative claim against any Debtor.

(e) Interest, Fees, Costs and Expenses. The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Interim Order and the DIP Loan Documents, in each case without further notice, motion or application to, order of, or hearing before, this Court. Subject to paragraph 21(a) of this Interim Order, as applicable, and the applicable provisions of the DIP Loan Documents or Pre-Petition Credit Documents, as applicable, the Debtors shall pay all fees,

costs, expenses (including reasonable and documented legal, financial advisory and other professional fees and expenses of the DIP Secured Parties and the Pre-Petition Secured Parties) and other charges payable under the terms of the DIP Loan Documents without regard to the amounts set forth with respect thereto in the Approved Budget. All such fees, costs, expenses and disbursements, whether incurred, paid or required to be paid pre-petition or post-petition, are hereby affirmed, ratified, authorized and payable (and any funds held by the DIP Agent and/or its professionals as of the Petition Date for payment of such fees, costs, expenses and disbursements may be applied for payment) as contemplated in this Interim Order and the DIP Loan Documents filed with the Court, and shall be non-refundable; provided, however, notwithstanding anything to the contrary herein, that any payments of legal, financial advisory or other professional fees of the Pre-Petition Agent and the other Pre-Petition Secured Parties shall be reapplied to reduce the principal amount of the Pre-Petition Obligations to the extent the Pre-Petition Agent and the other Pre-Petition Secured Parties are not entitled to such payment or reimbursement pursuant to section 506(b) of the Bankruptcy Code.

(f) Use of DIP Facility Proceeds. Subject to the terms and conditions contained in this Interim Order and the DIP Loan Documents, from and after the Petition Date, the Debtors are authorized to use borrowings under the DIP Facility only for the purposes specifically set forth in this Interim Order and the DIP Loan Documents and subject to and in accordance with the Approved Budget.

(g) Application of Collateral Proceeds. Notwithstanding anything to the contrary in the Pre-Petition Credit Agreement, subject to the Carve-Out, the proceeds of DIP Collateral, the proceeds of Pre-Petition Collateral, any amounts held on account of the DIP

Collateral or Pre-Petition Collateral, and all payments and collections received by the Debtors shall be applied as follows:

(i) Prior to the Termination Declaration Date, to pay (x) (A) interest, fees, costs and expenses due and payable under the DIP Loan Documents and (B) interest, costs and expenses due and payable under the Pre-Petition Credit Documents, as applicable, in each case, in accordance with the DIP Loan Documents, the Pre-Petition Credit Documents and this Interim Order or the Final Order, or (y) to the extent permitted by the DIP Loan Documents, the Pre-Petition Credit Documents, this Interim Order or the Final Order, to pay expenses set forth in the Approved Budget.

(ii) Subject and subordinate to the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein), the proceeds of DIP Collateral or Pre-Petition Collateral, any amounts held on account of the DIP Collateral or Pre-Petition Collateral, and all payments and collections received by the Debtors shall be applied as follows upon the occurrence of the Termination Declaration Date: first, to pay the DIP Obligations in respect of any cost or expense, reimbursements, fees or indemnities due to the DIP Agent; second, to permanently reduce the DIP Obligations, including, without duplication, any cost or expense, reimbursements, fees or indemnities owing to the DIP Secured Parties, until indefeasibly paid in full in cash, and cash collateralize, obtain back to back and/or cancel all outstanding Letters of Credit issued or deemed issued under the DIP Loan Documents, each in accordance with the DIP Loan Documents and this Interim Order or the Final Order, as applicable; third, to pay the Pre-Petition Credit Obligations in respect of any cost or expense, reimbursements, fees or indemnities due to the Pre-Petition Agent; fourth, to permanently reduce the Pre-Petition Credit Obligations owing to the Revolving Credit Lenders, the L/C Issuers (as each term in defined in the Pre-Petition Credit Agreement) until indefeasibly paid in full in cash (or if applicable, cash collateralized) in accordance with the provisions set forth in the Pre-Petition Credit Agreement and other Pre-Petition Credit Documents; fifth, to permanently reduce the remaining Pre-Petition Credit Obligations in accordance with the provisions of Section 2.12(c) of the Pre-Petition Credit Agreement; and, sixth, to the Debtors for distribution in the manner required by the Bankruptcy Code or order of the Court.

(h) Conditions Precedent. The DIP Lenders shall have no obligation to make any DIP Loan during the Interim Period unless and until all conditions precedent to the making of any such DIP Loan under the DIP Loan Documents and this Interim Order have been satisfied in full or waived by the DIP Agent and/or the DIP Required Lenders each in its sole discretion in accordance with the DIP Loan Documents and this Interim Order.



(i) DIP Liens. In each instance described below subject and subordinate to the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein), as security for the DIP Obligations, the following security interests and liens, which shall, immediately and without any further action, be valid, binding, permanent, fully perfected, continuing, enforceable and non-avoidable upon the date the Court enters this Interim Order (the “*DIP Liens*”), are hereby granted by the Debtors to the DIP Agent for its own benefit and the ratable benefit of the DIP Secured Parties on all of the property of the Debtors, now existing or hereinafter acquired, including, without limitation, all Cash Collateral, cash and cash equivalents (whether maintained with the DIP Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, capital stock of subsidiaries, tax and other refunds, insurance proceeds, commercial tort claims, rights under section 506(c) of the Bankruptcy Code (solely upon entry of the Final Order), Avoidance Action Proceeds (solely upon entry of the Final Order), all other collateral and all other “property of the estate” (within the meaning of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible or mixed, and all rents, products, substitutions, accessions, profits, replacements and cash and non-cash proceeds of all of the foregoing (all of the foregoing collateral collectively referred to as the “*DIP Collateral*,” and together with the Pre-Petition Collateral, the “*Collateral*”) (provided, however, that in the case of any DIP Lien on any capital

stock of any Debtor or any direct or indirect subsidiary thereof, the DIP liens shall consist of (i) 100% of the capital stock of such Debtor and each direct and indirect domestic subsidiary of such Debtor directly owned by any Debtor, and (ii) (A) 100% of the non-voting capital stock of each direct or indirect foreign subsidiary directly owned by any Debtor and (B) 65% of the voting capital stock of each foreign subsidiary directly owned by any Debtor):

(I) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable and non-avoidable first priority Lien on all unencumbered DIP Collateral, including, subject to the entry of the Final Order, Avoidance Action Proceeds;

(II) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected, binding, continuing, enforceable and non-avoidable junior Lien on all DIP Collateral that is subject to any Permitted Prior Lien (whether existing immediately prior to the Petition Date or perfected on or after the Petition Date pursuant to section 546(b) of the Bankruptcy Code);

(III) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected, binding, continuing, enforceable and non-avoidable first priority senior priming Lien on all DIP Collateral of the Debtors (including Cash Collateral) that is senior in all respects to (x) the Pre-Petition First Priority Liens and (y) except for the Permitted Prior Liens, any other liens in favor of any other person or entity, including all Liens junior to the Pre-Petition First Priority Liens (the “*Primed Liens*”), which Primed Liens, together with any Liens granted on or after the Petition Date to provide adequate protection in respect of any of the Primed Liens, shall be primed by and made subject and subordinate to the DIP Liens; provided, however, that the Liens described in this clause (III) shall be subject and subordinate to the Permitted Prior Liens and the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein).

(j) DIP Lien Priority. Notwithstanding anything to the contrary contained in this Interim Order or the other DIP Loan Documents, for the avoidance of doubt, the DIP Liens granted to the DIP Agent for the ratable benefit of the DIP Secured Parties shall in each and every case be first priority senior Liens that (i) are subject only to the Permitted Prior Liens and, to the extent provided in the provisions of this Interim Order and the DIP Loan Documents shall also be subject and subordinate to the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein), and (ii) except as provided in clause (i) of this paragraph 2(j), are

senior to all pre-petition and post-petition Liens of any other person or entity (including the Primed Liens and the Adequate Protection Replacement Liens (as defined below)). The DIP Liens and the DIP Super-Priority Claims (as defined below) (A) shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code or, subject to entry of the Final Order, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with any intercompany or affiliate Liens of the Debtors, and (C) shall, along with the Carve-Out and the protections provided thereby for the administrative creditors in these Cases, including the Debtor Professionals (as defined below) and the Committee Professionals (as defined below), be valid and enforceable against any trustee or any other estate representative appointed in the Cases, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (each, a “*Successor Case*”), and/or upon the dismissal of any of the Cases. Except as otherwise expressly permitted by this Interim Order or the DIP Loan Documents, no claim or Lien having a priority superior to or *pari passu* with those granted by this Interim Order with respect to the DIP Obligations and the Carve-Out shall be granted or allowed until (x) all DIP Obligations have been indefeasibly paid in full in cash and the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein) funded in full in accordance with this Interim Order and (y) all commitments under the DIP Loan Documents have been irrevocably terminated.

(k) Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the applicable Debtors, which DIP Obligations (and the Carve-Out) shall be enforceable against such Debtors, their estates and any successors thereto (including any trustee or other estate representative in any Successor Case),

and their creditors, in accordance with their terms. No obligation, payment, transfer or grant of security under the Interim Cash Collateral Order, the DIP Credit Agreement, the other DIP Loan Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544, 547, 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise) counterclaim, cross-claim, defense or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(1) Super-Priority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Interim Order, all of the DIP Obligations shall constitute allowed super-priority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the payment of the Carve-Out or any claims thereunder (subject to the Carve-Out Cap and other limitations set forth herein), over all other administrative expense claims, adequate protection and other diminution claims (including the First Lien Super-Priority Claims (as defined below)), unsecured claims and all other claims against the applicable Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy or attachment (the “*DIP Super-Priority Claims*”). The

DIP Super-Priority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof, subject and subordinate to the Carve-Out and any claims to the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein), as applicable. Other than as provided in the DIP Credit Agreement and this Interim Order with respect to the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein), no costs or expenses of administration, including professional fees allowed and payable under sections 328, 330, 331 and 503 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no administrative priority claims or other priority claims are, or will be, senior to, prior to or *pari passu* with the DIP Liens and the DIP Super-Priority Claims or the DIP Obligations, or with any other claims of the DIP Secured Parties arising hereunder.

3. **Authorization to Use Cash Collateral.** Subject to paragraph 7 herein, the terms and protections of the Interim Cash Collateral Order are hereby ratified and confirmed, except to the extent amended or modified by this Interim Order, and all payments made and protections provided thereunder for any party, including creditors of the Debtors, are ratified and confirmed and shall be deemed made or provided in accordance with this Interim Order. Subject to the terms and conditions of this Interim Order, the Debtors are authorized, pursuant to section 363 of the Bankruptcy Code, to use the Cash Collateral for a period of time from the date hereof until the earliest to occur of (i) the termination of the commitments under the DIP Facility or the acceleration of the DIP Obligations as set forth in the DIP Credit Agreement; (ii) the date that this Interim Order ceases to be in full force and effect; (iii) immediately upon delivery of written

notice to the Debtors and the Committee by the DIP Agent of any breach or default by the Debtors of the terms and provisions of this Interim Order, which breach or default is continuing and has not been cured by the Debtors or waived in a manner consistent with the terms and conditions of the DIP Credit Agreement or determined by this Court not to be a breach or default; (iv) immediately upon delivery of written notice to the Debtors and the Committee by the DIP Agent of an Event of Default under the DIP Credit Agreement, which Event of Default is continuing and has not been cured by the Debtors or waived in a manner consistent with the terms and conditions of the DIP Credit Agreement or determined by this Court not to be an Event of Default; (v) the conversion of any of the Cases to a chapter 7 case; or (vi) appointment of a trustee or examiner with expanded powers. Each Debtor shall be prohibited from using Cash Collateral except in accordance with the terms and conditions of this Interim Order, the DIP Loan Documents and the Approved Budget, and nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside of the ordinary course of business or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in the DIP Loan Documents, or with the consent of the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, as expressly permitted in any applicable order of this Court consistent with the DIP Loan Documents.

4. **Adequate Protection for Pre-Petition Secured Parties.** In consideration for the use of Cash Collateral, the consent of the Pre-Petition Secured Parties to the entry of this Interim Order and the priming of the Pre-Petition Secured Parties' liens, claims and interests in the Pre-Petition Collateral (including Cash Collateral) from and after the Petition Date, the Pre-Petition

Secured Parties collectively shall receive the following adequate protection (collectively, “*Adequate Protection*”):

(a) Replacement Liens. To the extent of any diminution in value from the Petition Date of the pre-petition interests of the Pre-Petition Secured Parties in the Pre-Petition Collateral, the Pre-Petition Agent (for the benefit of itself and the other Pre-Petition Secured Parties) is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e) and 364 of the Bankruptcy Code, replacement Liens upon all of the DIP Collateral (the “*Adequate Protection Replacement Liens*”), which Adequate Protection Replacement Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens, the Permitted Prior Liens, the Pre-Petition First Priority Liens and the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein), to the extent expressly provided in the DIP Loan Documents and this Interim Order.

(b) Super-Priority Claims. To the extent of any diminution in value from the Petition Date of the pre-petition interests of the Pre-Petition Secured Parties in the Pre-Petition Collateral, the Pre-Petition Secured Parties are hereby granted allowed super-priority administrative claims (such adequate protection super-priority claims, the “*First Lien Super-Priority Claims*”), pursuant to section 507(b) of the Bankruptcy Code, junior only to the Carve-Out and any claims thereto (subject to the Carve-Out Cap and other limitations set forth herein) and the DIP Super-Priority Claims to the extent provided herein and in the DIP Loan Documents and payable from and having recourse to all of the DIP Collateral; provided, however, that the Pre-Petition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the First Lien Super-Priority Claims unless and until (x) all DIP Obligations have been indefeasibly paid in full in cash, (y) all credit commitments under the DIP Loan Documents

have been irrevocably terminated, and (z) the Carve-Out and all claims thereto (subject to the Carve-Out Cap and other limitations set forth herein) have been paid in cash or otherwise funded in full. Subject to the relative priorities set forth above, the First Lien Super-Priority Claims against each Debtor shall be against each Debtor on a joint and several basis.

(c) Professional Fees. Subject to paragraph 21(a) below, without limiting any rights of the Pre-Petition Agent and the other Pre-Petition Secured Parties under section 506(b) of the Bankruptcy Code which are hereby preserved, the Pre-Petition Agent and other Pre-Petition Secured Parties shall receive current cash payment of fees and expenses due from time to time under the Pre-Petition Credit Agreement, including the reimbursement of reasonable and documented fees and expenses of counsel, financial advisors and other professionals of the Pre-Petition Agent and other Pre-Petition Secured Parties, without regard to the amounts set forth with respect thereto in the Approved Budget; provided, however, that any payments of legal, financial advisory or other professional fees of the Pre-Petition Agent and the other Pre-Petition Secured Parties shall be reapplied to reduce the principal amount of the Pre-Petition Obligations to the extent the Pre-Petition Agent and the other Pre-Petition Secured Parties are not entitled to such payment or reimbursement pursuant to section 506(b) of the Bankruptcy Code.

(d) Interest Payments. The Pre-Petition Agent and Pre-Petition Lenders shall receive current cash payment of interest due under the Pre-Petition Credit Agreement, in arrears on the first business day of each month at the non-default rate of interest as set forth in the Pre-Petition Credit Agreement; provided, however, that any payments of interest under the Pre-Petition Credit Agreement shall be reapplied to reduce the principal amount of the Pre-Petition Obligations to the extent the Pre-Petition Agent and the other Pre-Petition Secured Parties are not entitled to such payment or reimbursement pursuant to section 506(b) of the Bankruptcy Code.



(e) Financial Reporting. The Debtors shall concurrently provide the Pre-Petition Agent with copies of all written reports that are provided to the DIP Agent pursuant to the DIP Loan Documents and this Interim Order, and shall continue to provide the Pre-Petition Agent with copies of all such written reports even after the DIP Obligations have been paid in full in cash (to the same extent as if the DIP Loan Documents were still in effect).

(f) Consent Rights. Subject to entry of the Final Order, whenever the consent of the DIP Required Lenders is required under this Interim Order, the DIP Loan Documents or any other order of this Court, consent of the Pre-Petition Required Lenders shall also be required. Pre-Petition Required Lenders' consent rights shall survive repayment in whole or part of the DIP Obligations. Notwithstanding the payment in full of the DIP Obligations and the termination of the DIP Loan Documents, the covenants set forth in the DIP Loan Documents and any order of this Court relating thereto shall continue in full force and effect for the benefit of the Pre-Petition Agent and the Pre-Petition Required Lenders, and may be enforced by the Pre-Petition Agent and/or the Pre-Petition Required Lenders.

(g) Right to Seek Additional Adequate Protection. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Pre-Petition Secured Parties. However, the Pre-Petition Agent and/or any other Pre-Petition Secured Party may request Court approval for additional or alternative adequate protection, without prejudice to any objection of the Debtors or any other party in interest to the grant of any additional or alternative adequate protection; provided that any such additional or alternative adequate protection shall at all times be subordinate and junior to the

claims and Liens of the DIP Secured Parties granted under this Interim Order and the DIP Loan Documents.

5. **Consent to Priming and Adequate Protection.** The Pre-Petition Agent and the other Pre-Petition Secured Parties consent and/or do not object to the Adequate Protection and the priming provided for herein; provided, however, that such consent of the Pre-Petition Agent and the other Pre-Petition Secured Parties to the priming of their Pre-Petition First Priority Liens, the use of Cash Collateral, and the sufficiency of the Adequate Protection provided for herein is expressly conditioned upon the entry of this Interim Order and such consent shall not be deemed to extend to any other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Loan Documents.

6. **Automatic Post-Petition Lien Perfection.** This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection and priority of the DIP Liens and the Adequate Protection Replacement Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other action to validate or perfect the DIP Liens and the Adequate Protection Replacement Liens or to entitle the DIP Liens and the Adequate Protection Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent and the Pre-Petition Agent (in the case of the Pre-Petition Agent, solely with respect to the Adequate Protection Replacement Liens) may, each in their sole discretion, file financing statements, mortgages, security agreements, notices of Liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices and other agreements or documents shall be deemed to

have been filed or recorded at the time and on the Petition Date. The applicable Debtors shall execute and deliver to the DIP Agent and the Pre-Petition Agent, as applicable, all such financing statements, mortgages, notices and other documents as such parties may reasonably request to evidence and confirm the contemplated priority of, the DIP Liens and the Adequate Protection Replacement Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, each of the DIP Agent and the Pre-Petition Agent, each in its discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. Subject to the entry of the Final Order, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof or other Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code, and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Loan Documents and this Interim Order. To the extent that the Pre-Petition Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtors' insurance policies or is the secured party under any Pre-Petition Credit Document, the DIP Agent shall also be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured

party under each such Pre-Petition Credit Document, shall have all rights and powers attendant to that position (including rights of enforcement) and shall act in that capacity and distribute any proceeds recovered or received in accordance with the DIP Loan Documents and this Interim Order. The Pre-Petition Agent shall serve as agent for the DIP Agent for purposes of perfecting their respective Liens on all DIP Collateral that is of a type such that perfection of a Lien therein may be accomplished only by possession or control by a secured party.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.** The Debtors' Stipulations shall be binding upon the Debtors in all circumstances. The Debtors' Stipulations shall be binding upon all other parties in interest, including any Committee and any trustee of the Debtors' estates appointed in these Cases, unless on or before February 29, 2012 (such time period shall be referred to as the "***Challenge Period***," and the date that is the next calendar day after the expiration of the Challenge Period, in the event that no objection or challenge is raised during the Challenge Period, shall be referred to as the "***Challenge Period Termination Date***"), such Committee, any trustee of the Debtors' estates appointed in these Cases, or other party in interest other than the Debtors obtains the authority to commence and commences, or a chapter 7 trustee commences in any Successor Case, prior to the expiration of the Challenge Period, a contested matter or adversary proceeding (x) challenging or otherwise objecting to any part of the Debtors' Stipulations, or (y) against any or all of the Pre-Petition Agent and/or the other Pre-Petition Secured Parties challenging any aspect of the Pre-Petition Credit Obligations, Pre-Petition First Priority Liens or the actions or inactions of any of the Pre-Petition Agent or the other Pre-Petition Secured Parties arising out of or related to the Pre-Petition Credit Obligations, or Pre-Petition First Priority Liens, including any claim against the Pre-Petition Agent or any other Pre-Petition Secured Party in the nature of "lender liability"

causes of action, setoff, avoidance, counterclaim or defense to the Pre-Petition Credit Obligations (including, but not limited to, Avoidance Actions or by way of suit against the Pre-Petition Agent or any Pre-Petition Secured Party) (the objections, challenges, actions and claims referenced in clauses (x) and (y), collectively, the “*Claims and Defenses*”) and (ii) this Court rules in favor of the plaintiff in any such contested matter or adversary proceeding properly commenced prior to the Challenge Period Termination Date; provided, that as to the Debtors, for themselves and not their estates, all such Claims and Defenses are irrevocably waived and relinquished as of the Petition Date. Until the Challenge Period Termination Date, any party in interest (other than the Debtors), including the Committee, may assert any Claims and Defenses. If no Claims and Defenses have been timely asserted in any such adversary proceeding or contested matter, then, upon the Challenge Period Termination Date, and for all purposes in these Cases and any Successor Case, (i) no payments made to the Pre-Petition Agent and the other Pre-Petition Secured Parties pursuant to this Interim Order, the Interim Cash Collateral Order or otherwise shall be subject to counterclaim, set-off, subordination, recharacterization, defense or avoidance, (ii) any and all such Claims and Defenses by any party in interest shall be deemed to be forever released, waived and barred, (iii) the Pre-Petition Credit Obligations shall be deemed to be an allowed claim, and (iv) the Debtors’ Stipulations, including the release provisions therein, shall be binding on all creditors and parties in interest, including any Committee and any subsequent trustee of the Debtors’ estates in these Cases or in any Successor Case; provided, however, that if the Committee files a motion for standing to assert any Claims and Defenses prior to the Challenge Period Termination Date (and provided that the relevant pleading asserting such Claims and Defenses is attached as an exhibit to such motion), then the Challenge Period Termination Date shall be tolled, solely for the Committee and solely with

respect to such Claims and Defenses set forth in the exhibit to such motion, until three (3) business days after the Court rules on such motion. Notwithstanding the foregoing, to the extent any Claims and Defenses are timely asserted in any such adversary proceeding or contested matter, (A) the Debtors' Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any party in interest, including any Committee or any subsequent trustee of the Debtors' estates in these Cases or in any Successor Case from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such adversary proceeding or contested matter, and (B) any portion of the Debtors' Stipulations or other provision in clauses (i) through (iv) in the immediately preceding sentence that is the subject of a timely filed Claim and Defense shall become binding and preclusive on any Committee (and any subsequent trustee of the Debtors' estates in these Cases or any Successor Case) and on any other party in interest to the extent set forth in any order of the Court resolving such Claim and Defense. Nothing in this Interim Order vests or confers on any person or entity, including any Committee, standing or authority to pursue any cause of action belonging to any or all of the Debtors or their estates, including any Claim and Defense or other claim against the Pre-Petition Agent, the DIP Agent, any other Pre-Petition Secured Party or any other DIP Secured Party, and the Pre-Petition Agent, the DIP Agent, the other Pre-Petition Secured Parties and DIP Secured Parties reserve all rights to challenge and object to such standing or authority.

8. **Carve-Out.** Subject to the terms and conditions contained in this paragraph 8, each of the DIP Liens, DIP Super-Priority Claims, Pre-Petition First Priority Liens, Adequate Protection Replacement Liens and First Lien Super-Priority Claims shall be subject and

subordinate in all respects to payment of the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein):

(a) For purposes of this Interim Order, “**Carve-Out**” means an amount equal to (i) the actual accrued, but unpaid reasonable and documented fees, costs and disbursements of retained professionals of the Debtors (other than ordinary course professionals) (the “**Debtor Professionals**,” and such fees, the “**Debtor Professional Fees**”) incurred up to and including the earliest of (A) the 363 Sale Termination Date, (B) delivery of a Carve-Out Trigger Notice, or (C) the closing of the 363 Sale, as applicable, that are ultimately allowed by order of the Court under section 330 of the Bankruptcy Code (whether such Debtor Professional Fees are allowed or payable before or after the 363 Sale Termination Date, the delivery of a Carve-Out Trigger Notice or the closing of the 363 Sale, as applicable), but solely to the extent such fees, costs and disbursements do not exceed the cumulative amount budgeted for each such professional in accordance with Schedule 1 to the Approved Budget for the post-petition period ending on the 363 Sale Termination Date, the delivery of a Carve-Out Trigger Notice or the closing of the 363 Sale, as applicable, (ii) the actual accrued, but unpaid reasonable and documented fees and expenses of professionals retained by the Committee (the “**Committee Professionals**,” and such fees, the “**Committee Professional Fees**”) incurred up to and including the earliest of (A) the 363 Sale Termination Date, (B) delivery of a Carve-Out Trigger Notice, or (C) the closing of the 363 Sale, as applicable, that are ultimately allowed by order of the Court under section 330 of the Bankruptcy Code (whether such Committee Professional Fees are allowed or payable before or after the 363 Sale Termination Date, the delivery of a Carve-Out Trigger Notice or the closing of the 363 Sale, as applicable), but solely to the extent such fees, costs and disbursements do not exceed the cumulative amount budgeted for such professionals in accordance with Schedule 1 to

the Approved Budget for the post-petition period ending on the 363 Sale Termination Date, the delivery of a Carve-Out Trigger Notice or the closing of the 363 Sale, as applicable, (iii) if applicable, all Debtor Professional Fees and Committee Professional Fees that are incurred from and after the 363 Sale Termination Date through one (1) business day following the date of delivery of a Carve-Out Trigger Notice (as defined below) and ultimately allowed by order of the Court under section 330 of the Bankruptcy Code, (iv) all allowed and unpaid Debtor Professional Fees and Committee Professional Fees that are incurred from and after the delivery of a Carve-Out Trigger Notice and ultimately allowed by order of the Court under section 330 of the Bankruptcy Code in an aggregate amount not in excess of \$850,000 for the Debtor Professionals and \$300,000 for the Committee Professionals, unless other amounts are agreed to by the DIP Agent and the DIP Required Lenders, on the one hand, and the Debtor Professionals and the Committee Professionals, each on the other hand, (v) all unpaid administrative expenses allowed under section 503(b) of the Bankruptcy Code (excluding amounts paid pursuant to clauses (i) – (iv) above and, for the avoidance of doubt, excluding all claims under section 503(b)(9) of the Bankruptcy Code) that (A) are not assumed by the purchaser in the 363 Sale, (B) were incurred prior to the earliest of one (1) business day following (I) the 363 Sale Termination Date, (II) delivery of a Carve-Out Trigger Notice, or (III) the closing of the 363 Sale, as applicable, and (C) (I) are incurred in accordance with the Approved Budget through the earliest date specified in clause (B) or (II) were incurred in the ordinary course of business, included in the most recently delivered Weekly Cash Flow Projection and do not exceed \$[ ] in the aggregate, (vi) all fees payable pursuant to 28 U.S.C. § 1930(a) and (b) and (vii) all fees due the Clerk of the Court or the clerk of any court to which an appeal may be taken. The amount set forth in clauses (i) through (vii) in the preceding sentence are collectively referred to herein as the “*Carve-Out*



*Cap*” and all claims arising pursuant to clauses (i) through (vii) in the preceding sentence are collectively referred to herein as the “*Carve-Out Claims*.” After the payment of all Debtor Professional Fees and Committee Professional Fees up to the Carve-Out Cap, to the extent there remains any unused retainers held by such professionals, such unused retainers shall be paid first to the DIP Secured Parties until the DIP Obligations are indefeasibly paid in full in cash and second to the Pre-Petition Secured Parties until the Pre-Petition Obligations are indefeasibly paid in full in cash. Upon the sale of all or substantially all of the Debtors’ assets pursuant to a transaction to which the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the Pre-Petition Required Lenders consent, the DIP Agent shall set aside (i) in segregated escrow accounts each for the benefit, individually, of non-professional administrative creditors covered by the Carve-Out, the Debtor Professionals, and the Committee Professionals, proceeds therefrom equal to the maximum amount of accrued and unpaid Carve-Out Claims up to the Carve-Out Cap and (ii) \$50,000 in another segregated escrow account to fund the fees, costs and expenses incurred in connection with the conversion of the Cases to Chapter 7 of the Bankruptcy Code and the liquidation of the Debtors’ estates. In connection with the sale transactions contemplated herein, the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders will negotiate a funding arrangement in good faith with respect to wind-down matters, including any plan of liquidation; provided, however, that the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders are not undertaking any commitment to enter into any such funding arrangement. For the avoidance of doubt, any holdbacks related to the Debtor Professionals Fees or the Committee Professional Fees (the “*Holdback Fees*”) shall be treated as incurred and payable as of the date the Holdback Fees are actually incurred, regardless of when any interim and/or final fee applications submitted

by the Debtor Professionals or Committee Professionals, as applicable, are approved by this Court.

(b) The term “**363 Sale Termination Date**” shall mean the date on which the DIP Agent or, if the DIP Obligations have been repaid in full in cash and all financing commitments under the DIP Loan Documents have terminated, the Pre-Petition Agent, delivers to the Debtors’ lead counsel, the U.S. Trustee, and lead counsel to any Committee appointed in these Cases, a written notice notifying such parties that, (i) except to the extent the DIP Secured Parties or the Pre-Petition Secured Parties have caused the Debtors to do so in violation of this Interim Order, the Final Order or the DIP Loan Documents, the Debtors have ceased to diligently pursue the 363 Sale (as defined below) in accordance with the terms and conditions set forth herein and in the DIP Loan Documents, as determined in the discretion of the DIP Agent (with the consent of the DIP Required Lenders) or the Pre-Petition Agent (with the consent of the Pre-Petition Required Lenders), as applicable; provided, however, that the Debtors reserve their rights to challenge whether they diligently pursued the 363 Sale, or (ii) the DIP Agent, or if the DIP Obligations have been repaid in full in cash and all financing commitments under the DIP Loan Documents have terminated, the Pre-Petition Agent, requests that the Debtors pursue other options for selling the Debtors’ assets, including, without limitation, through (x) multiple sales of the Debtors’ various mills, properties, or business, other than that contemplated by the 363 Sale or (y) a sale or sales to a different purchaser or purchasers other than the DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders.

(c) The term “**Carve-Out Trigger Notice**” shall mean a written notice delivered by the DIP Agent to the Debtors’ lead counsel, the U.S. Trustee, and lead counsel to any Committee appointed in these Cases, which notice may be delivered at any time following

the occurrence and during the continuation of any Event of Default under the DIP Loan Documents or this Interim Order, expressly stating that the Termination Declaration Date has occurred and that the Carve-Out is invoked as of the next business day. Promptly after delivery of a Carve-Out Trigger Notice to the Debtors' lead counsel, the U.S. Trustee, and lead counsel to any Committee appointed in these Cases, the DIP Agent shall file a notice of such action with the Court.

(d) So long as no Carve-Out Trigger Notice has been delivered to the Debtors, the Debtors shall use Cash Collateral or advances under the DIP Facility, subject to the DIP Loan Documents and this Interim Order and in accordance with the amounts set forth on Schedule 1 to the Approved Budget, on a cumulative basis by Debtor Professional or Committee Professional, as applicable, to pay such compensation and expense reimbursements of the Debtor Professionals and the Committee Professionals as may be awarded by the Court.

(e) The DIP Agent shall be entitled to establish and maintain reserves against borrowing availability under the DIP Facility on account of the Carve-Out and the Carve-Out Claims in accordance with the terms of the DIP Credit Agreement.

(f) No portion of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility may be used for the payment of the fees and expenses of any person incurred challenging, or in relation to the challenge of, (i) the Liens or claims of any or all of DIP Agent and/or the other DIP Secured Parties, or the initiation or prosecution of any claim or cause of action against any or all of DIP Agent, the other DIP Secured Parties, including, without limitation, any Avoidance Actions or (ii) any claims or causes of actions (including, without limitation, any Avoidance Actions) against any or all of the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the other Pre-Petition

Secured Parties, their respective affiliates, agents, attorneys, financial advisors, consultants, officers, directors and employees, including formal discovery proceedings in anticipation thereof, and/or challenging any Lien or claim of any or all of the Pre-Petition Agent and the other Pre-Petition Secured Parties, or asserting any other lender liability or other claim or cause of action against any of the Pre-Petition Agent and the other Pre-Petition Secured Parties. The foregoing notwithstanding, no more than \$50,000, in the aggregate, of the amounts set forth in the Budget, the Carve-Out, DIP Collateral, Cash Collateral or any proceeds of the DIP Facility may be used by the Committee, or any representative of the estates, to investigate, but not prosecute or prepare to prosecute any challenge to, the claims and/or liens of the Pre-Petition Agent and the other Pre-Petition Secured Parties under the Pre-Petition Credit Documents.

(g) Furthermore, none of the Carve-Out, DIP Collateral, Pre-Petition Collateral, Cash Collateral or any proceeds of the DIP Facility shall be used to prevent, hinder or delay the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent or the other Pre-Petition Secured Parties from exercising any default-related right and remedy (including, without limitation, any enforcement or realization upon the DIP Collateral or Pre-Petition Collateral) once an Event of Default has occurred and is continuing (subject to the provisions of paragraph 18(b) below) under the DIP Loan Documents, the Pre-Petition Credit Documents or this Interim Order.

(h) Nothing herein shall be construed as consent to the allowance of any Debtor Professional Fees, Committee Professional Fees or the professional fees or expenses of any unofficial committee or any other party in interest, or shall affect the right of the DIP Agent, any other DIP Secured Party, the Pre-Petition Agent or any other Pre-Petition Secured Party to object to the allowance and payment of such fees and expenses.

(i) Other than with respect to any payments permitted to be made from the Carve-Out, the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties shall not be responsible for the direct payment or reimbursement of any Debtor Professional Fees or Committee Professional Fees incurred in these Cases or any Successor Case. Except as otherwise required by paragraph 8(a) of this Interim Order, nothing in this Interim Order or otherwise shall be construed (i) to obligate the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent or the other Pre-Petition Secured Parties in any way to pay compensation or to reimburse expenses of any of the Debtor Professionals or the Committee Professionals or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement; (ii) to increase the Carve-Out if the actual Debtor Professional Fees or Committee Professional Fees are higher than the Carve-Out Cap; or (iii) as consent to the allowance of any Debtor Professional Fees or Committee Professional Fees. Notwithstanding anything to the contrary herein, any funding of the Carve-Out shall be added to and made a part of the DIP Obligations and secured by the DIP Collateral and otherwise entitled to the protections granted under this Interim Order, the DIP Loan Documents, the Bankruptcy Code and applicable law.

9. **Credit Bid.** Subject to paragraph 7 of this Interim Order, the Pre-Petition Agent shall have the unqualified right to credit bid up to the full amount of any Pre-Petition Credit Obligations in any sale of the Pre-Petition Collateral (or any DIP Collateral subject to any Adequate Protection Replacement Liens) with the consent of the Pre-Petition Required Lenders under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code. The Debtors,

on behalf of themselves and their estates, stipulate and agree that any sale of all or part of the Collateral that does not include an unqualified right to credit bid up to the full amount of the Pre-Petition Credit Obligations would mean that the Pre-Petition Agent and the other Pre-Petition Secured Parties will not receive the indubitable equivalent of their claims and interests.

10. **DIP Credit Bid.** The DIP Agent shall have the unqualified right to credit bid any or all of the DIP Obligations, with the consent of the DIP Required Lenders, under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any of the Debtors under section 725 of the Bankruptcy Code.

11. **Waiver of Section 506(c) Claims.** Subject to the entry of the Final Order, as a further condition of the DIP Facility, any obligation of the other DIP Secured Parties to make credit extensions pursuant to the DIP Loan Documents (and their consent to the payment of the Carve-Out to the extent provided herein) and the consent of the Pre-Petition Secured Parties to the Debtors' use of Cash Collateral as provided herein, no costs or expenses of administration of the Cases or any Successor Case shall be charged against or recovered from or against any or all of the DIP Secured Parties, the Pre-Petition Secured Parties, the DIP Collateral, the Pre-Petition Collateral, and the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent or the Pre-Petition Required Lenders, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Secured Parties and the Pre-Petition Secured Parties. Notwithstanding the foregoing, as consideration for the DIP Secured Parties and the Pre-Petition Secured Parties' consent to the Carve-Out, the Debtor Professionals (and upon entry of the Final Order, the Committee Professionals) waive

any rights pursuant to section 506(c) of the Bankruptcy Code or otherwise to charge any Debtor Professional Fees or Committee Professional Fees against or recover from or against any or all of the DIP Secured Parties, the Pre-Petition Secured Parties, the DIP Collateral, the Pre-Petition Collateral, and the Cash Collateral.

12. **Plan Waiver**. Subject to entry of the Final Order, the Debtors expressly stipulate, and the Court finds and adjudicates that, no order shall be entered confirming any plan of reorganization, notwithstanding any otherwise applicable provision of the Bankruptcy Code, unless: (i) with respect to the DIP Obligations, such plan provides for the indefeasible payment in full in cash of all DIP Obligations on the effective date of such plan including, if applicable, the cancellation, backing or cash collateralization of all letters of credit issued or deemed issued under the DIP Loan Documents, if any, and (ii) with respect to the Pre-Petition Credit Obligations, subject to paragraph 7 herein, such plan provides either (x) for the indefeasible payment in full in cash on the effective date of the plan of all Pre-Petition Credit Obligations including, if applicable, the cancellation, backing or cash collateralization of all letters of credit issued or deemed issued under the Pre-Petition Loan Documents, if any, or (y) such alternative treatment of all Pre-Petition Credit Obligations as is consented to, in writing, by the holders of at least two-thirds in aggregate amount and one-half in aggregate number of claims in respect of the Pre-Petition Credit Obligations.

13. **Protection of DIP Secured Parties' Rights**.

(a) Unless the DIP Agent and the DIP Required Lenders shall have provided their prior written consent or all DIP Obligations have been indefeasibly paid in full in cash and

all commitments under the DIP Loan Documents have been irrevocably terminated, and the Pre-Petition Agent and the Pre-Petition Required Lenders have provided their prior written consent, there shall not be entered in these proceedings or in any Successor Case any order which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the DIP Collateral or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the DIP Liens, DIP Super-Priority Claims, First Lien Super-Priority Claims, other DIP Protections, the Adequate Protection and the Adequate Protection Replacement Liens granted pursuant to this Interim Order, or (ii) the use of DIP Collateral proceeds for any purpose other than as permitted in accordance with the Approved Budget, the DIP Loan Documents and this Interim Order.

(b) The Debtors and the Brant Parties shall, for and on behalf of themselves (and in the cases of clauses (ii) through (v) below, to the extent applicable, cause their representatives to) (i) maintain books, records and accounts to the extent and as required by the DIP Loan Documents, (ii) reasonably cooperate, consult with, and provide to the DIP Agent, the Pre-Petition Agent and Avenue (in each case coordinated through the DIP Agent) all such information as required or allowed under the DIP Loan Documents or the provisions of this Interim Order, (iii) as and to the extent required by the DIP Loan Documents (in each case coordinated through the DIP Agent), after reasonable prior notice, permit representatives of the DIP Agent, the Pre-Petition Agent and Avenue to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of the Debtors' books and records, to conduct a collateral audit and analysis of each of the Debtors' respective inventory and accounts, to tour the Debtors' business premises and other properties, and to discuss and provide advice with respect to each of the Debtors' respective affairs, finances, properties, business



operations and accounts with their respective officers (including, without limitation, the Brant Parties and the CRO), employees and independent registered certified public accountants as and to the extent required by the DIP Loan Documents, (iv) permit the DIP Agent, the Pre-Petition Agent and Avenue (in each case coordinated through the DIP Agent) and their respective representatives and advisors to consult and have regularly scheduled meetings with the Debtors' senior management (including, without limitation, the CRO) and advisors on matters concerning the Debtors' businesses, financial condition, strategic planning, cash and liquidity management, restructuring activities, progress with respect any sale of assets pursuant to section 363 of the Bankruptcy Code, operations or any other aspect of the Cases and (v) subject to the confidentiality provisions of the DIP Loan Documents, provide all data, documents, reports or other information about or related to the Debtors (whether or not deemed confidential or proprietary), including, without limitation, all reports or other documents relating to any Environmental Liability of the Debtors as reasonably requested by the DIP Agent, the Pre-Petition Agent and Avenue (in each case coordinated through the DIP Agent) and their respective representatives and advisors in connection with each party's due diligence process in pursuing a credit bid. Any breach of the covenants contained in this paragraph 13(b) shall constitute an Event of Default hereunder or under the DIP Credit Documents (x) unless such breach is cured by the applicable person or entity on or before 5:00 p.m., prevailing Eastern Time, on the second business day after the date on which the DIP Agent or Pre-Petition Agent delivers written notice thereof to such person or entity or (y) if such breach is waived in writing by the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders.

14. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 13 above, if at any time prior to the indefeasible payment in full in cash of all DIP Obligations and the irrevocable termination of all commitments under the DIP Loan Documents, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed by order of the Court shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d) or any other provision of the Bankruptcy Code in violation of the DIP Loan Documents or this Interim Order, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent until indefeasible payment in full in cash of the DIP Obligations, subject to payment or other funding of the Carve-Out and claims with respect thereto (subject to the Carve-Out Cap and other limitations set forth herein), and in accordance with this Interim Order.

15. **Cash Collection.** From and after the date of the entry of this Interim Order, collections and proceeds of any DIP Collateral or Pre-Petition Collateral, and all Cash Collateral shall be swept daily either directly into an account or accounts (the "***Cash Collection Accounts***") subject to Control Agreements and in accordance with the DIP Loan Documents and this Interim Order or otherwise pursuant to a structure acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders. Subject to the provisions of paragraph 18 of this Interim Order, upon the direction of the DIP Agent and the DIP Required Lenders, at any time upon the occurrence or during the continuation of an Event of Default, all funds in the Cash Collection Accounts shall be remitted immediately first, to the DIP Agent for application to the DIP Obligations until indefeasible payment in full in cash of each of the DIP Obligations and second to the Pre-Petition Agent for application to the Pre-Petition Credit Obligations under, and in accordance with the provisions of the Pre-Petition Credit Documents

until indefeasible payment in full in cash of the Pre-Petition Credit Obligations, in each case subject to the application of proceeds provisions contained in paragraph 2(g)(ii) herein, and the DIP Agent or the Pre-Petition Agent, as applicable, shall be authorized to take all action as necessary or appropriate to effectuate the foregoing. The blocked account control agreements in place under the Pre-Petition Credit Documents are deemed amended so as to effectively grant “control” (within the meaning of the Uniform Commercial Code) to the DIP Agent for the benefit of the DIP Secured Parties over all accounts subject thereto, including the Cash Collection Accounts, and so as to perfect the DIP Secured Parties’ liens on and interests in such accounts. Unless otherwise agreed to by the DIP Agent and the Pre-Petition Agent, the Debtors shall maintain no accounts except those specifically identified in the *Order (I) Authorizing Continued use of Existing Bank Accounts, Cash Management System, and Checks and Business Forms and (II) Approving Temporary Waiver of Deposit and Investment Requirements*, dated November 17, 2011 [ECF No. 54] (the “**Cash Management Order**”). Notwithstanding anything to the contrary in this Interim Order or the Cash Management Order, and pursuant to the DIP Loan Documents, if, at any time after the date of entry of this Interim Order, the total balance in the Cash Collection Accounts exceeds \$5,000,000, all amounts in excess of \$5,000,000 shall be promptly swept into an account under the sole dominion and control of the DIP Agent; provided, however, that, upon the request of the Debtors and so long as the Debtors are permitted to use Cash Collateral pursuant to the DIP Credit Documents, this Interim Order or the Final Order, as applicable, the DIP Agent shall use best efforts to release such excess funds to the Debtors, solely in accordance with the Approved Budget, one (1) business day after any such request.

16. **Disposition of DIP Collateral.** The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral (other than in the ordinary

course of business or dispositions of obsolete or worn out assets in accordance with the DIP Credit Agreement) without the prior written consent of the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders (and no such consent shall be implied from any other action, inaction or acquiescence by any DIP Secured Party or any Pre-Petition Secured Party or any order of this Court), except to the extent any such sale, transfer, lease, encumbrance or other disposition is both (a) permitted in the DIP Loan Documents and/or the Pre-Petition Credit Documents, as applicable, and this Interim Order and (b) approved by the Court to the extent required under applicable bankruptcy law.

17. **Events of Default.** The following shall constitute an event of default under this Interim Order and the DIP Loan Documents, unless waived in writing by the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, as applicable (the “*Events of Default*”):

(a) The occurrence of an “Event of Default” under the DIP Credit Agreement, as set forth therein.

(b) The Debtors’ failure to perform any of the obligations (the “*Sale Milestones*”) as set forth on and when required by Exhibit B attached hereto, except to the extent that the Court determines that the DIP Secured Parties or the Pre-Petition Secured Parties have caused such failure to perform any such Sale Milestone.

(c) Any other breach or default by any of the Debtors or any of the Brant Parties of the terms and provisions of this Interim Order.

18. **Rights and Remedies Upon Event of Default.**

(a) Immediately upon the occurrence and during the continuation of an Event of Default, the DIP Agent may, and at the written direction of the DIP Required Lenders shall, (i)(1) declare all DIP Obligations to be immediately due and payable, (2) declare the termination, reduction or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains, and/or (3) terminate the DIP Facility and any other DIP Loan Documents as to any future liability or obligation of the DIP Agent and the other DIP Secured Parties, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; and/or (ii) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral (any such declaration under any of clauses 18(a)(i)(1), (2) or (3) shall be made to the respective lead counsel to the Debtors, the Committee and the U.S. Trustee, and shall be referred to herein as a “**Termination Declaration**” and the date which is the earliest to occur of any such Termination Declaration being herein referred to as the “**Termination Declaration Date**”).

(b) In addition to the remedies described above and other customary remedies, five (5) business days following the Termination Declaration Date, the DIP Agent shall have relief from the automatic stay and may foreclose on, or otherwise realize on, its DIP Liens on all or any portion of the DIP Collateral, including by collecting accounts receivable and applying the proceeds thereof to the DIP Obligations, occupy the Debtors’ premises to sell or otherwise dispose of the DIP Collateral or otherwise exercise remedies against the DIP Collateral permitted by applicable non-bankruptcy law. During such five (5) business day period, the Debtors and any Committee shall, by the filing of a motion, be entitled to an emergency hearing before the Bankruptcy Court for the sole purpose of contesting whether an Event of Default has occurred. Unless the Court at such hearing determines that an Event of Default has not occurred and is not

continuing, the automatic stay, as to the DIP Agent and the other DIP Secured Parties, shall automatically terminate upon the end of such five (5) business day period. Notwithstanding the foregoing, nothing herein shall preclude the DIP Agent from seeking an order from the Court authorizing the DIP Agent to exercise any enforcement rights or remedies with respect to the DIP Collateral on less than five (5) business days' notice or the Debtors from opposing any such request.

(c) Upon the effectiveness of any relief from the automatic stay with respect to the DIP Facility pursuant to paragraph 18(b) hereof, the Pre-Petition Agent shall have relief from the automatic stay and may foreclose on, or otherwise realize on its Pre-Petition First Priority Liens and the Adequate Protection Replacement Liens on, all or any portion of the Collateral, collect accounts receivable and, subject to payment in full in cash of the DIP Obligations, apply the proceeds thereof to the Pre-Petition Credit Obligations, occupy the Debtors' premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by this Interim Order and applicable non-bankruptcy law.

(d) Subject to entry of the Final Order, five (5) business days following an Event of Default resulting from the Debtors' breach of any Sale Milestone, except to the extent that the Court determines that the DIP Secured Parties or the Pre-Petition Secured Parties have caused such breach, the Debtors' exclusivity rights under section 1121 of the Bankruptcy Code, effective immediately without any further notice, hearing, motion, order or other action of any kind, shall be modified so as to permit the DIP Agent and the Pre-Petition Agent on behalf of the DIP Secured Parties and Pre-Petition Secured Parties to file and solicit acceptances for and otherwise seek to approve, confirm and consummate, as applicable, a plan of reorganization and accompanying disclosure statement, subject to the applicable requirements of the Bankruptcy

Code; provided, however, that the terms of such plan of reorganization shall be substantially on the same terms as the 363 Sale, including payment of all claims contemplated to be paid under the 363 Sale, including the general treatment of claims and other matters contemplated on Exhibit B hereunder.

(e) All proceeds realized in connection with the exercise of the rights and remedies of the DIP Secured Parties or the Pre-Petition Secured Parties shall be turned over first to an escrow agent chosen by the Debtors to fund in full all amounts due under the Carve-Out, subject to the Carve-Out Cap and the other limitations set forth herein, second to the DIP Agent for application to the DIP Obligations under, and in accordance with the provisions of, the DIP Loan Documents and this Interim Order until indefeasible payment in full in cash of each of the DIP Obligations and third to the Pre-Petition Agent for application to the Pre-Petition Credit Obligations under, and in accordance with the provisions of the Pre-Petition Credit Documents and this Interim Order until indefeasible payment in full in cash of the Pre-Petition Credit Obligations.

(f) Notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Agent and the other DIP Secured Parties contained in this Interim Order and the DIP Loan Documents or otherwise available at law or in equity, upon reasonable prior written notice to the Debtors and lead counsel to the Committee and any landlord, lienholder, licensor or other third party owner of any leased or licensed premises or intellectual property that an Event of Default has occurred and is continuing, the DIP Agent (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to DIP Collateral located

thereon and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of the Debtors, which are owned by or subject to a Lien of any third party and which are used by Debtors in their business, in all cases without interference from lienholders or licensors thereunder, provided, however, that the DIP Agent, on behalf of the DIP Secured Parties, shall pay only rent and additional rent, fees, royalties or other obligations of the Debtors that first arise after the written notice referenced above from the DIP Agent and that are payable during the period of such occupancy or use by such DIP Agent calculated on a *per diem* basis. Nothing herein shall require the Debtors, the DIP Agent or the other DIP Secured Parties to assume any lease or license under section 365(a) of the Bankruptcy Code as a precondition to the rights afforded to the DIP Agent and the other DIP Secured Parties in this paragraph 18(f).

(g) Subject to satisfaction of the DIP Obligations, notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the Pre-Petition Agent or the other Pre-Petition Secured Parties contained in this Interim Order or the Pre-Petition Credit Documents, or otherwise available at law or in equity, and after reasonable prior written notice has been given by the Pre-Petition Agent to the Debtors and any landlord, lienholder, licensor or other third party owner of any leased or licensed premises or intellectual property that an Event of Default (as defined in the Pre-Petition Credit Agreement) has occurred, the Pre-Petition Agent (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent or Pre-Petition Agent, enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to Pre-Petition Collateral (or any DIP Collateral subject to any Adequate Protection Replacement Lien) located thereon and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or



licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents or any other similar assets of the Debtors, which are owned by or subject to a Lien of any third party and which are used by Debtors in their business, in all cases without interference from lienholders or licensors thereunder; provided, however, that the Pre-Petition Agent, on behalf of the Pre-Petition Secured Parties, shall pay only rent and additional rent, fees, royalties or other obligations of the Debtors that are payable during the period of such occupancy or use by such Pre-Petition Agent calculated on a *per diem* basis. Nothing herein shall require the Debtors, the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent or the other Pre-Petition Secured Parties to assume any lease or license under section 365(a) of the Bankruptcy Code as a precondition to the rights afforded to the Pre-Petition Agent and the other Pre-Petition Secured Parties in this paragraph 18(g).

(h) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of this Interim Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the Adequate Protection Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Pre-Petition Secured Parties and the DIP Secured Parties under the DIP Loan Documents, the DIP Facility and this Interim Order, (ii) authorize the DIP Secured Parties and the Pre-Petition Secured Parties to retain and apply payments hereunder, and (iii) as otherwise necessary to implement and effectuate the provisions of this Interim Order.

19. **Proofs of Claim.** The Pre-Petition Agent shall be authorized (but not required) to file a master proof of claim against the Debtors (the “*Master Proof of Claim*”) on behalf of itself and the other Pre-Petition Secured Parties on account of their pre-petition claims arising under the Pre-Petition Credit Documents. The Debtors’ Stipulations in paragraph D herein shall be

deemed to constitute a timely filed proof of claim of the Pre-Petition Agent and each other Pre-Petition Secured Party. If the Pre-Petition Agent so files a Master Proof of Claim against the Debtors, the Pre-Petition Agent and each other Pre-Petition Secured Party, as the case may be, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against the Debtors arising under the Pre-Petition Credit Documents, and the claims of the Pre-Petition Agent and each other Pre-Petition Secured Party, as the case may be, and each of their respective successors and assigns, named in the Master Proof of Claim shall be allowed or disallowed as if such entity had filed a separate proof of claim in each Case in the amount set forth opposite each name listed in the Master Proof of Claim. The Pre-Petition Agent shall further be authorized to amend its Master Proof of Claim from time to time to, among other things, reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of such claims. The provisions set forth in this paragraph 19 and any Master Proof of Claim filed pursuant to the terms hereof are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party in interest or their respective successors in interest, including the rights of the Pre-Petition Agent and each Pre-Petition Secured Party as the holder of a claim against the Debtors under applicable law, and the numerosity requirements set forth in section 1126 of the Bankruptcy Code.

20. **Preservation of Rights Granted under the Interim Order.**

(a) No Non-Consensual Modification or Extension of Interim Order. Unless all DIP Obligations and the Pre-Petition Credit Obligations shall have been indefeasibly paid in full in cash and all commitments under the DIP Loan Documents have been irrevocably terminated, the Debtors shall not seek, and it shall constitute an Event of Default, if there is

entered (i) an order (other than the Final Order) amending, supplementing, extending or otherwise modifying this Interim Order or (ii) an order converting or dismissing any of the Cases, in each case, without the prior written consent of the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, which consent shall not be implied by any other action, inaction or acquiescence.

(b) Dismissal. If any order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) to the fullest extent permitted by law that (i) the DIP Protections, the Adequate Protection and the Carve-Out (subject to the Carve-Out Cap and the other limitations set forth herein) shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations have been indefeasibly paid in full in cash, all Adequate Protection has been indefeasibly paid in full in cash or otherwise satisfied in full, and all commitments under the DIP Loan Documents have been irrevocably terminated (and that all DIP Protections and the Adequate Protection shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and the Adequate Protection.

(c) Modification of Interim Order. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed by a subsequent order of this Court or any other court, the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties shall be entitled to the

protections provided in section 364(e) of the Bankruptcy Code, and no such reversal, modification, vacatur or stay shall affect (i) the validity, priority or enforceability of the Carve-Out (subject to the Carve-Out Cap and the other limitations set forth herein), any DIP Protections and the Adequate Protection granted or incurred prior to the actual receipt of written notice by the DIP Agent or the Pre-Petition Agent, as the case may be, of the effective date of such reversal, modification, vacatur or stay or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations and the Adequate Protection. Notwithstanding any such reversal, modification, vacatur or stay, any use of Cash Collateral or any DIP Obligations or Adequate Protection incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent or the Pre-Petition Agent, as applicable, of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties and the Pre-Petition Secured Parties shall be entitled to all of the DIP Protections and the Adequate Protection, as the case may be, and all other rights, remedies, Liens, priorities, privileges, protections and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order and pursuant to the DIP Loan Documents with respect to all uses of Cash Collateral and all DIP Obligations and Adequate Protection (subject and subordinate to the Carve-Out (subject to the Carve-Out Cap and other limitations set forth herein)).

(d) Survival of Interim Order. The provisions of this Interim Order, the DIP Loan Documents and the Interim Cash Collateral Order (to the extent such provisions in the Interim Cash Collateral Order are not amended or modified by this Interim Order), any actions taken pursuant hereto or thereto, and all of the DIP Protections, the Adequate Protection, and all other rights, remedies, liens, priorities, privileges, protections and benefits granted to any or all

of the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties (as well as those related to the Carve-Out for the beneficiaries thereof) shall survive, and shall not be modified, impaired or discharged by, (x) in the case of the Adequate Protection and all other rights, remedies, liens, priorities, privileges, protections and benefits granted to any or all of the Pre-Petition Agent and the other Pre-Petition Secured Parties (including, without limitation, the Debtors' obligation to pursue and consummate a 363 Sale in accordance with the provisions set forth in Exhibit B hereto and the other provisions of this Interim Order), the repayment of the DIP Obligations and the termination of all commitments under the DIP Loan Documents, or (y) the entry of any order of this Court, including, without limitation, any order confirming any plan of reorganization, converting any Case to a case under chapter 7, dismissing any Case, withdrawal of the reference as to any Case or any Successor Case or providing for abstention from handling or retaining of jurisdiction of any Case in this Court, or terminating the joint administration of these Cases or by any other act or omission. The terms and provisions of the Interim Cash Collateral Order (to the extent such provisions are not amended or modified by this Interim Order) and this Interim Order, including all of the DIP Protections, Adequate Protection and all other rights, remedies, liens, priorities, privileges, protections and benefits granted to any or all of the DIP Agent, the other DIP Secured Parties, Pre-Petition Agent and the other Pre-Petition Secured Parties, as well as those related to the Carve-Out for the beneficiaries thereof, shall continue in full force and effect notwithstanding (x) the repayment of the DIP Obligations and the termination of all commitments under the DIP Loan Documents or (y) the entry of any such order, and such DIP Protections, Adequate Protection and the Carve-Out (subject to the Carve-Out Cap and the other limitations set forth

herein) shall continue in these proceedings and in any Successor Case, and shall maintain their respective priorities as provided by this Interim Order.

21. **Other Rights and Obligations.**

(a) Expenses. Subject to paragraphs 2(e) and 4(c) herein, as provided in the DIP Loan Documents or the Pre-Petition Credit Documents, as applicable, the Debtors will pay all reasonable and documented expenses incurred by the DIP Secured Parties and the Pre-Petition Secured Parties (including the reasonable and documented fees, costs and expenses of the respective legal, financial and other professional advisors for the DIP Agent, the Pre-Petition Agent and Avenue) in connection with the Cases and the preparation, execution, delivery, administration and enforcement of the DIP Loan Documents, the Pre-Petition Credit Documents, the Interim Cash Collateral Order, this Interim Order, any Final Order and any other agreements, instruments, pleadings or other documents prepared or reviewed in connection with any of the foregoing, without regard to the amounts set forth with respect thereto in the Approved Budget. Payment of such fees shall not be subject to allowance by this Court. Professionals for the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties (collectively, the “*Lender Professionals*”) shall not be required to comply with the U.S. Trustee fee guidelines or submit invoices to the Court, U.S. Trustee, any Committee or any other party-in-interest absent further court order. Copies of invoices submitted to the Debtors by such Lender Professionals shall be forwarded by the Debtors to the U.S. Trustee, counsel for any Committee, and such other parties as the Court may direct. The invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses (without limiting the right of the various professionals as appropriate to exclude information which such professionals believe in good faith to be protected by the attorney-client privilege, the attorney

work product doctrine or other privilege). If the Debtors, U.S. Trustee or any Committee objects to the reasonableness of the fees and expenses of any Lender Professional within ten (10) days of receipt of an invoice, and cannot resolve such objection within five (5) days thereafter, the objecting party shall file with the Court and serve on such Lender Professional an objection (the “*Fee Objection*”) limited to the issue of reasonableness of such fees and expenses. The Debtors shall timely pay in accordance with the terms and conditions of this Interim Order the undisputed fees, costs and expenses reflected on any invoice to which a Fee Objection has been timely filed.

(b) Binding Effect. Subject to paragraph 7 above, the provisions of this Interim Order, including all findings herein and any portions related to the Carve-Out, and the DIP Loan Documents shall be binding upon all parties in interest in these Cases, including the DIP Secured Parties, the Pre-Petition Secured Parties, any Committee and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, any examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), whether in any of the Cases, in any Successor Case, or upon dismissal of any such Case or Successor Case; provided, however, that except to the extent expressly provided in paragraph 8(a) hereof, the DIP Secured Parties and the Pre-Petition Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in any Case or Successor Case, other than as may be necessary to fund the Carve-Out and satisfy any claims thereunder (subject to the Carve-Out Cap and other limitations set forth herein).

(c) No Waiver. Neither the failure of the Pre-Petition Agent or the other Pre-Petition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Pre-Petition Credit Documents or otherwise (or any delay in seeking or exercising same), nor the failure of the DIP Agent or the other DIP Secured Parties to seek relief or otherwise exercise their respective rights and remedies under this Interim Order, the DIP Loan Documents or otherwise (or any delay in seeking or exercising same), shall constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Except as expressly provided herein, nothing contained in this Interim Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Pre-Petition Agent, any other Pre-Petition Secured Party, the DIP Agent or any other DIP Secured Party. Except as prohibited by this Interim Order, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, the ability of the Pre-Petition Agent, the other Pre-Petition Secured Parties, the DIP Agent or the other DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Cases to cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan or plans with respect to any of the Debtors, or (iii) exercise any of the rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent or the other Pre-Petition Secured Parties, respectively. Except to the extent otherwise expressly provided in this Interim Order, neither the commencement of the Cases nor the entry of this Interim Order shall limit or otherwise modify the rights and remedies of the Pre-Petition Agent or the other Pre-Petition



Secured Parties with respect to non-Debtor entities or their respective assets, whether such rights and remedies arise under the Pre-Petition Credit Documents, applicable law, or equity.

(d) Brant Management Agreement. That certain Management and Administrative Services Agreement, dated as of March 31, 2008, between Brant Industries and the Borrower (as amended, supplemented or otherwise modified from time to time, the “**Brant Management Agreement**”) shall be deemed rejected by the Debtors pursuant to section 365 of the Bankruptcy Code, without further notice and hearing or approval of this Court, effective upon the earlier of (i) March 28, 2012, and (ii) the closing of the 363 Credit Bid Agreement or any Alternate APA to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing (the date on which any such rejection occurs, the “**Brant Management Agreement Rejection Date**”). At all times prior to the Brant Management Agreement Rejection Date, in consideration of the payment of the Post-Petition Brant Management Fee (and expressly conditioned thereon) in accordance with paragraph 2(d) above, Brant Industries shall continue to provide services to the Debtors in accordance with the terms of the Brant Management Agreement, and at all times, it shall be deemed to have waived and released any claims arising in respect of any rejection of the Brant Management Agreement in accordance with this paragraph 21(d) (the “**Brant Rejection Claim**”) (but Brant Industries shall not be deemed to have waived any pre-petition claim other than the Brant Rejection Claim). Notwithstanding the foregoing, (i) nothing herein shall impair or alter the rights of the Debtors to file a motion to reject the Brant Management Agreement pursuant to section 365 of the Bankruptcy Code at any time or impair or alter the Brant Parties’ right to oppose any such motion and (ii) if the Debtors reject the Brant Management Agreement, they shall be deemed to waive their rights to exercise any and all extension rights afforded to the Borrower under Section

3.4(b)(i) thereof for any period from and after the Brant Management Agreement Rejection Date. Upon the occurrence of the Brant Management Agreement Rejection Date, the Brant Parties, to the extent applicable, shall be deemed to have resigned from any officer or director positions with the Debtors, and the Debtors, on the one hand, and the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, on the other hand, shall work in good faith to choose a reasonably acceptable independent and disinterested replacement director for any such director positions with the Debtors as soon as practicable following the Brant Management Agreement Rejection Date; provided, however, that the Brant Parties currently serving in a director position with the Debtors shall not be deemed to have resigned from such position until a replacement director is appointed in accordance with this paragraph. Subject to the provisions of the immediately following sentence, the Approved Budget shall include provision for the payment of reasonable and documented post-petition fees, costs and expenses of Shearman & Sterling LLP (the “**Reimbursable Brant Legal Fees**”), in its capacity as counsel to Brant Industries in connection with the Cases, in an aggregate amount not to exceed \$200,000 (the “**Brant Fee Cap**”), to be paid on the closing date of the sale transaction described in clause (ii) below) only if (i) the Brant Parties have performed and complied with all of their post-petition obligations in all material respects under the Brant Management Agreement, this Interim Order and the Final Order, and (ii) the transactions contemplated by the Credit Bid APA, or any Alternate APA in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders are consummated. None of the Reimbursable Brant Legal Fees incurred on or after the date of entry of this Interim Order shall be used to prevent, hinder or delay the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent or the other Pre-Petition Secured Parties from exercising any default-related

right and remedy (including, without limitation, any enforcement or realization upon the DIP Collateral or Pre-Petition Collateral) once an Event of Default has occurred and is continuing (subject to the provisions of paragraph 18(b) above) under the DIP Loan Documents, the Pre-Petition Credit Documents or this Interim Order, or to otherwise pursue any claim or cause of action against the DIP Agent, the DIP Secured Parties, the Pre-Petition Agent or the Pre-Petition Secured Parties.

(e) Chief Restructuring Officer. In accordance with the CRO Order, which shall be deemed to be amended hereby, the CRO shall (a) have direct and complete access to the Debtors' managers, officers, advisors, employees and other representatives, and with respect only to matters relating to the Debtors, to Brant Industries' managers, officers, advisors, employees and other representatives providing services to the Debtors, and shall at all times be entitled to take all action necessary or appropriate to be fully informed with respect to the Debtors' financial condition, operations, customers and business prospects, including, but not limited to, direct and complete access to the Brant Parties providing services to the Debtors and the offices of Brant Industries in Greenwich, Connecticut and their books and records relating to the Debtors, and communicate with the Debtors' customers, (b) oversee the 363 Sale on behalf of the Debtors, including the activities of any investment banker retained by the Debtors, (c) respond to all reasonable information requests or inquiries of the DIP Agent, the Pre-Petition Agent, Avenue and their respective representatives concerning any and all matters relating to the activities of the CRO, including, without limitation, communications outside the presence of any representatives of the Debtors (other than attorneys, where applicable) or the Brant Parties and (d) provide the DIP Agent, the Pre-Petition Agent, Avenue and their respective representatives copies of all reports, analyses, materials provided by the CRO to the Debtors, as reasonably

requested, in accordance with the terms of this Interim Order. In accordance with applicable law and custom, the CRO shall report to the Board of Managers or Directors of each of the Debtors, as applicable. In addition to the foregoing: (i) any disbursement to be made by the Debtors in excess of \$75,000 in accordance with the Approved Budget shall require the prior approval of the CRO; (ii) the CRO shall have approval rights with respect to (w) any decision or action by the Debtors or Brant Industries relating to any allocation or servicing of business as and between the Debtors, on the one hand, and White Birch Paper Company and its affiliates, on the other hand (collectively, “*White Birch*”) from existing customers of the Debtors (that is not consistent in all material respects with historical practice with respect to such customers), (x) any material action that is taken by the Debtors or the Brant Parties that is outside of the ordinary course of business including without limitation the shutting down of any product lines, business, or plants, (y) any material transactions between the Debtors on one hand, and the Brant Parties on the other hand, and (z) sales of inventory outside of the ordinary course of business or otherwise on non-market terms; (iii) Brant Industries and the Debtors shall provide reasonable advance notice to, and shall consult with, the CRO before making any decision concerning the allocation or servicing of business as between the Debtors, on the one hand, and White Birch, on the other hand, from new customers; and (iv) the CRO shall be entitled to investigate or otherwise evaluate the basis for any decision or action by Brant Industries or the Debtors over which the CRO has approval or consultation rights (as the case may be) described in clauses (ii) and (iii) of this paragraph 21(e), and the Brant Parties providing services to the Debtors shall cooperate with any such investigation or evaluation and shall provide the CRO with full and complete access to the books and records of Brant Industries related to the Debtors with respect to any such investigation or evaluation. For the avoidance of doubt, the obligations of the Brant Parties set

forth in this paragraph 21(e) shall not apply with respect to White Birch or any subsidiaries of White Birch other than the Debtors, except to the extent any information related to White Birch is incorporated into or is part of information of the Debtors required to be produced and/or shared in accordance with this Interim Order and cannot reasonably be extracted or separated (but may be redacted, as appropriate).

(f) Cooperation. The Debtors and the Brant Parties providing services to the Debtors and their respective representatives and advisors agree to cooperate in good faith, and not interfere with the CRO, the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent, and the other Pre-Petition Secured Parties, and each of their respective representatives and advisors, to effectuate the terms of this Interim Order and the DIP Loan Documents, including cooperating in good faith with respect to the 363 Sale process, any actual or potential credit bid by the DIP Agent or the Pre-Petition Agent, the consummation of the 363 Sale and the engagement and retention of the CRO. In connection with the 363 Sale, upon reasonable request of the DIP Agent, the Pre-Petition Agent or Avenue, the Debtors shall promptly retain (at Debtors' expense, which expense shall be deemed part of the Approved Budget, and the DIP Obligations shall be increased in accordance therewith) one or more consulting firms reasonably acceptable to the DIP Agent, Pre-Petition Agent and Avenue to prepare, and upon receipt, shall promptly provide the DIP Agent, Pre-Pre-Petition Agent and Avenue copies of, written assessments and consultant reports (with copies of any such assessments or reports to be provided to any qualified bidders during the 363 Sale process and the Committee) (i) containing an update as to the status of any liability issue identified in any document delivered to, or any liability issue identified by, the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties in connection with the DIP Loan Documents and the

Pre-Petition Credit Documents, or (ii) as to any other condition or matter reasonably believed by the DIP Agent, Pre-Petition Agent or Avenue to result in, or otherwise cause the Debtors to incur, any material liabilities. Such report shall provide the estimated cost to perform any remedial action that may be required to cure such liabilities and, if reasonably requested by the DIP Agent, the Pre-Petition Agent or Avenue, shall include such further diligence information with respect to the Debtors as may be reasonably necessary to provide such estimate. Without limiting the foregoing, as promptly as practicable after any request by the DIP Agent, the Pre-Petition Agent, Avenue, the CRO, the Debtors and/or the Brant Parties shall provide, such additional information, reports, consultant's reports (including environmental reports), diligence materials, financial and operational data (including customer specific information) and other documents and information as may be reasonably necessary or desirable in connection with any proposed or contemplated credit bid by the DIP Agent or the Pre-Petition Agent or in connection with the CRO's performance of its responsibilities, and (ii) the Brant Parties providing service to the Debtors shall, as promptly as practicable after request by the CRO, the Debtors, or the purchaser in respect of the 363 Sale, turnover to (x) the Debtors, prior to the consummation of the 363 Sale, or (y) the purchaser, after the consummation of the 363 Sale any property of the Debtors that is in the possession or control of the applicable Brant Party. Any breach of the covenants contained in this paragraph 21(f) shall not constitute an Event of Default hereunder or under the DIP Credit Documents (x) unless such breach is not cured by the applicable person or entity on or before 5:00 p.m., prevailing Eastern Time, on the second business day after the date on which the DIP Agent or Pre-Petition Agent delivers written notice thereof to such person or entity or (y) if such breach is waived in writing by the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders. For the avoidance of doubt, the

obligations of the Brant Parties set forth in this paragraph 21(f) shall not apply with respect to White Birch or any subsidiaries of White Birch other than the Debtors.

(g) No Third Party Rights. Except as explicitly provided for herein, including with respect to the Carve-Out, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Credit Agreement or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Loan Documents, the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent and the other Pre-Petition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates.

(h) No Marshaling. Subject to entry of the Final Order, except as provided in this Interim Order or in the DIP Loan Documents, none of the DIP Agent, the other DIP Secured Parties, the Pre-Petition Agent or the other Pre-Petition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Collateral, as applicable, other than the Avoidance Action Proceeds, which shall be the last Collateral used to repay the DIP Obligations or to satisfy the Adequate Protection granted herein.

(i) Amendments. The Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement or waive any provision of the DIP Loan Documents in accordance with the provisions thereof, unless such amendment, modification, supplement or waiver (i) increases the interest rate (other than as a result of the imposition of the default rate), (ii) increases the aggregate lending commitments of all of the DIP Secured Parties in respect of the DIP Facility, (iii) changes the Scheduled

Termination Date, or (iv) adds or amends (in any respect unfavorable to the Debtors) any Event of Default. No waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by on behalf of all the Debtors, the DIP Agent (after having obtained the requisite approval required under the DIP Loan Documents) and the Pre-Petition Agent (after having obtained the requisite approval required under the Pre-Petition Credit Documents) and, except as provided herein, approved by this Court.

(j) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of this Interim Order, the provisions of this Interim Order shall govern and control. In the event of any inconsistency between the terms and conditions of the Interim Cash Collateral Order and of this Interim Order, the provisions of this Interim Order shall govern and control. In the event of any inconsistency between the terms and conditions of the CRO Order and this Interim Order, the provisions of this Interim Order shall govern and control.

(k) Enforceability. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule or Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(l) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.



(m) Provision of Information to Committee. To the extent any information, reports and/or access rights under this Interim Order are to be provided to the DIP Agent and/or the Pre-Petition Agent, copies of such information and reports and/or substantially similar access rights will also be provided contemporaneously to the Committee.

22. **Final Hearing.**

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for \_\_\_\_\_, 2011, at \_\_\_\_\_ (prevailing Eastern Time) at the United States Bankruptcy Court for the District of Delaware. The proposed Final Order shall be in form and substance satisfactory to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders and shall be substantially the same as this Interim Order except that those provisions in this Interim Order that are subject to the entry of the Final Order shall be included in the Final Order without such qualification. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

(b) Final Hearing Notice. Within five (5) business days, the Debtors or their agent shall serve, by United States mail, first-class postage prepaid (such service constituting adequate notice of the Final Hearing), (i) notice of the entry of this Interim Order and of the Final Hearing (the "***Final Hearing Notice***") and (ii) a copy of this Interim Order, on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections

with the Clerk of the Bankruptcy Court no later than December [\_\_\_], 2011, which objections shall be served so that the same are received on or before such date by: (a) counsel for the Debtors, Cahill Gordon & Reindel LLP, Eighty Pine Street, New York, New York 10005, Attn: Joel H. Levitin (jlevitin@cahill.com) and Richard A. Stieglitz Jr. (rstieglitz@cahill.com); (b) counsel for the Debtors, Richards, Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins (collins@rlf.com) and Lee Kaufman (kaufman@rlf.com); (c) counsel for the DIP Agent and the Pre-Petition Agent, Latham & Watkins LLP, 233 South Wacker Drive, Suite 5800, Chicago, Illinois 60606, Attn: Richard A. Levy (richard.levy@lw.com) and Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022, Attn: David Hammerman (david.hammerman@lw.com); (d) counsel for the DIP Agent and the Pre-Petition Agent, Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, Delaware 19801, Attn: Kurt F. Gwynne (kgwynne@reedsmith.com); (e) counsel to Avenue Investments, LP, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: John Bessonette (jbessonette@kramerlevin.com) and Douglas Mannal (dmannal@kramerlevin.com); (f) proposed counsel to the Committee, Lowenstein Sandler PC, 65 Livingston Avenue, Roseland, New Jersey 07068, Attn: Bruce D. Buechler (bbuechler@lowenstein.com) and Attn: John K. Sherwood (jsherwood@lowenstein.com) and Lowenstein Sandler PC, 1251 Avenue of the Americas, New York, New York 10020, Attn: Bruce S. Nathan (bnathan@lowenstein.com) and David M. Banker (dbanker@lowenstein.com); and (g) the Office of the United States Trustee for the District of Delaware.

23. **Retention of Jurisdiction.** The Bankruptcy Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: December \_\_\_, 2011  
Wilmington, Delaware

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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**Initial Approved Budget**



**SP Newsprint Paper Company**  
**Professional Fees- Schedule 1**

In \$000's

DRAFT- SUBJECT TO REVIEW

**Professional Fee Notes**

Monthly fee schedule forecasts fees incurred in months that services are rendered. Weekly fee schedule forecasts cash disbursements for professional fees based on assumed payment terms. Forecast assumes Debtor and Unsecured Creditors' Committee advisory fees are subject to a 20% hold-back (with quarterly releases). Forecast assumes Debtor and Unsecured Creditors' Committee fees are charged monthly in arrears, with invoicing on the 15th day of the following month and payment after a 21 day review period. Forecast assumes Secured Creditors fees are charged monthly in arrears and that payments are made after a 10 day review period. AP Services and Raymond James are forecast to be paid as a normal course advisor with no hold-back.

**Monthly Professional Fees (Earned)**

	Nov (Est)	Dec	Jan	Feb	Mar
<b>AP Services (Interim Management)</b>	<b>464</b>	<b>619</b>	<b>619</b>	<b>619</b>	<b>619</b>
<b>Debtor Professionals</b>					
Cahill	578	770	715	715	715
Richards, Layton & Finger	41	55	55	55	55
Garden City Group	19	28	28	28	28
Raymond James	-	83	83	83	83
<b>Debtor Professionals Total</b>	<b>638</b>	<b>935</b>	<b>880</b>	<b>880</b>	<b>880</b>
<b>Secured Creditor Advisors</b>					
A&M	103	138	138	138	110
Latham/Kramer Levin	682	550	440	440	330
<b>Secured Creditor Advisors Total</b>	<b>785</b>	<b>688</b>	<b>578</b>	<b>578</b>	<b>440</b>
<b>Unsecured Committee</b>					
BDO	91	91	91	91	91
Lowenstein Sandler/ Ashby	242	242	242	242	242
<b>Unsecured Committee Total</b>	<b>-</b>	<b>333</b>	<b>333</b>	<b>333</b>	<b>333</b>
<b>Professional Fees Total</b>	<b>\$ 1,988</b>	<b>\$ 2,575</b>	<b>\$ 2,410</b>	<b>\$ 2,410</b>	<b>\$ 2,272</b>

**Weekly Professional Fees (Disbursed)**

	12/16/2011	12/23/2011	12/30/2011	1/6/2012	1/13/2012	1/20/2012	1/27/2012	2/3/2012	2/10/2012	2/17/2012	2/24/2012	3/2/2012	3/9/2012
<b>Restructuring Advisors</b>													
<b>AP Services (Interim Management)</b>	<b>298</b>	<b>286</b>	<b>-</b>	<b>286</b>	<b>-</b>	<b>286</b>	<b>-</b>	<b>286</b>	<b>-</b>	<b>286</b>	<b>-</b>	<b>286</b>	<b>-</b>
<b>Debtor Professionals</b>													
Cahill				462					616				1,128
Richards, Layton & Finger				33					44				85
Garden City Group	19			15					22				42
Raymond James				83					83				83
<b>Debtor Professionals Total</b>	<b>19</b>	<b>-</b>	<b>-</b>	<b>593</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>765</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1,338</b>
<b>Secured Creditor Advisors</b>													
A&M		103			138				138				
Latham/Kramer Levin	682				550				440				
<b>Secured Creditor Advisors Total</b>	<b>682</b>	<b>103</b>	<b>-</b>	<b>-</b>	<b>688</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>578</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Unsecured Committee</b>													
BDO									73				128
Lowenstein Sandler/ Ashby									194				339
<b>Unsecured Committee Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>267</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>467</b>
<b>Professional Fees Total</b>	<b>\$ 999</b>	<b>\$ 389</b>	<b>\$ 0</b>	<b>\$ 879</b>	<b>\$ 688</b>	<b>\$ 286</b>	<b>\$ 0</b>	<b>\$ 286</b>	<b>\$ 1,609</b>	<b>\$ 286</b>	<b>\$ 0</b>	<b>\$ 286</b>	<b>\$ 1,804</b>

## EXHIBIT B

### Sale Milestones and Other Sale Related Matters

- 1) On or before the later of (A) January 18<sup>th</sup>, 2012 or (B) the fifth business day after (i) the Pre-Petition Agent, on behalf of the Pre-Petition Secured Parties, provides to the Debtors a Credit Bid APA (as defined below), or (ii) the Third-Party APA (as defined below) (such Credit Bid APA and Third-Party APA shall provide for the assumption or payment of the claims set forth in clauses (w), (x), (y) and (z) below) , or such later date to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their sole discretion (the date of such filing, the “**Initial Deadline**”), the Debtors shall file and properly serve (i) a motion, in form and substance reasonably satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders (such motion, the “**Sale Procedure Motion**”) seeking entry of an order, in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders (the “**Sale Procedures Order**”) approving (a) bidding and auction procedures in connection with a sale of all or substantially all of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code, which bidding and auction procedures shall be satisfactory to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders (the “**363 Sale**”), and (b) subject to higher and better bids, an asset purchase agreement pursuant to which the Pre-Petition Agent (or its designee), on behalf of the Pre-Petition Secured Parties, agrees to “credit bid” all or a portion of their claims in respect of the Pre-Petition Credit Obligations as consideration for the purchase of all or substantially all of the assets of the Debtors, which credit bid shall not include any breakup fee and shall provide for the assumption or payment of (w) all allowed administrative priority claims set forth in the Approved Budget and incurred prior to the closing date of the 363 Sale and any allowed administrative priority claims set forth in the most recent Weekly Cash Flow Projection that were incurred but not paid prior to the closing date of the 363 Sale (for the avoidance of doubt, this shall include all allowed claims under section 503(b)(9) of the Bankruptcy Code even if said 503(b)(9) claims are not provided for in the Approved Budget (subject to an agreed upon procedure reasonably acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent, the Pre-Petition Required Lenders and the Committee), and shall exclude all Debtor Professional Fees or Committee Professional Fees in excess of the Carve-Out Cap), (x) all allowed non-insider prepetition trade claims incurred in the ordinary course to the extent set forth in a schedule, in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders, to be attached to the Credit Bid APA (as defined below), (y) all Avoidance Actions arising under section 547 of the Bankruptcy Code and related state law causes of action, in each case solely with respect to actions against trade creditors (the “**Assumed Preference Actions**”) and all such Assumed Preference Actions shall be deemed released on the closing date of the 363 Sale; provided, however, that the term Assumed Preference Actions shall not include any Avoidance Actions or other claims of any Debtor or its estate against any or all of the Brant Parties, Brant Industries, White Birch, their respective subsidiaries and affiliates or any other insiders of the Debtors (all of such Avoidance Actions and other claims against the Brant Parties, Brant Industries, White Birch, their respective subsidiaries and affiliates or any other insiders of the Debtors shall remain causes of action that can be pursued by, or on behalf of, the Debtors’ estates), and (z) such other prepetition claims to which the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing (the “**Credit Bid APA**”), or such other asset purchase agreement with a third-party that provides for the assumption, assignment, or payment of the claims set forth in clauses (w), (x), (y) and (z) above and which asset purchase agreement is in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders in their sole discretion (the “**Third-Party APA**”); provided, however, that to the extent such Third-Party APA provides for the indefeasible

payment in full in cash of the DIP Obligations and the Pre-Petition Obligations, such Third-Party APA shall be in form and substance reasonably satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders and (ii) an executed copy of the Credit Bid APA or such other asset purchase agreement.

- 2) On or before the date that is ten (10) days after the Initial Deadline, or such later date to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their sole discretion, the Bankruptcy Court shall have held a hearing on the Sale Procedures Motion.
- 3) On or before the date that is fifteen (15) days after the Initial Deadline, or such later date to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their sole discretion, the Bankruptcy Court shall have entered the Sale Procedures Order, which order shall be in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders.
- 4) On or before the date that is forty-five (45) days after the Initial Deadline, or such later date to which the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders consent in writing in their sole discretion, the Debtors shall have held an auction (the "**Auction**") in connection with the 363 Sale and in accordance with the provisions of the Sale Procedures Order.
- 5) Unless the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders agree otherwise in their sole discretion, on or before the date that is forty-seven (47) days after the Initial Deadline, the Bankruptcy Court shall have entered an order, in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders, approving the 363 Sale, the results of the Auction and the winning bid received at the Auction.
- 6) Unless the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders agree otherwise in their sole discretion, on or before the date that is (x) 51 days after the Initial Deadline, if a waiver of the stay set forth in Bankruptcy Rule 6004 is obtained, or (y) 65 days after the Initial Deadline (the "**Outer Sale Closing Date**"), if such a waiver is not obtained, the Debtors shall have consummated the 363 Sale, pursuant to the Credit Bid APA or pursuant to such other asset purchase agreement (the "**Alternate APA**") as is entered into between the Debtors and the winning bidder at the Auction (the "**Winning Bid**"), which Alternate APA shall be in form and substance satisfactory to the DIP Agent, the Pre-Petition Agent, the DIP Required Lenders and the Pre-Petition Required Lenders. The Winning Bid shall be acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders.
- 7) The Debtors shall retain an investment banker reasonably acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, on monetary terms and conditions acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders in their sole discretion, and on all other terms and conditions reasonably acceptable to the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders, and no proceeds of DIP Collateral, Pre-Petition Collateral or DIP Loans may be used to pay, and the Carve-Out shall not include, any fees and expenses of any investment banker or other financial advisor retained by any Debtor unless the DIP Agent, the DIP Required Lenders, the Pre-Petition Agent and the Pre-Petition Required Lenders have consented to the monetary conditions and terms of such retention.



- 8) Nothing herein obligates the DIP Agent or the Pre-Petition Agent to submit a Credit Bid APA or otherwise make a credit bid of any or all of the DIP Obligations or Pre-Petition Credit Obligations, as applicable.
- 9) Notwithstanding anything to the contrary herein, the Court may set dates with respect to the Sale Milestones beyond the outer date permitted hereunder to accommodate its schedule. To the extent the Court makes such an extension, the Sale Milestones hereunder shall be automatically extended by the same time period as the Court's extension.
- 10) Nothing herein shall limit the right of the Committee to object to the Sale Procedures Motion or to any motion for approval of the Credit Bid APA or Alternate APA, including, without limitation, any objection concerning the sale process timeline set forth in the Sale Procedures Motion.

**EXHIBIT C**

**Holtz Declaration**

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

In re:	)	
	)	Chapter 11
SP NEWSPRINT HOLDINGS LLC, <u>et al.</u> , <sup>1</sup>	)	Case No. 11-13649 (CSS)
	)	
Debtors.	)	Jointly Administered
	)	

**DECLARATION OF ALAN D. HOLTZ IN SUPPORT OF DEBTORS’  
MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING  
DEBTORS (A) TO OBTAIN POST-PETITION SECURED FINANCING PURSUANT TO  
11 U.S.C. §§ 105, 361, 362, 364, AND 507; AND (B) TO UTILIZE CASH COLLATERAL  
PURSUANT TO 11 U.S.C. § 363; (II) GRANTING LIENS AND SUPER-PRIORITY  
CLAIMS; (III) GRANTING ADEQUATE PROTECTION TO PRE-PETITION  
SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 363, AND 364; AND (IV)  
SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001**

I, Alan D. Holtz, hereby declare the following under penalty of perjury pursuant to 28 U.S.C. § 1746 (this “Declaration”):

1. My name is Alan D. Holtz, and I am over 21 years of age. I am of sound mind, and, if called as a witness, I would attest to the facts described herein and would testify competently thereto.

2. I am a managing director of AlixPartners, LLP, and an authorized representative of AP Services, LLC (“APS”), which has a place of business at 2000 Town Center, Suite 2400, Southfield, Michigan 48075. On the Petition Date, I was appointed the Debtors’ Senior Vice President-Restructuring, and subject to entry of the Interim Order, I will become the Debtors’ Chief Restructuring Officer. My firm was first engaged to advise the Debtors in October 2009.

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each of the Debtors’ tax identification numbers, are: SP Newsprint Holdings, LLC (6180); SP Newsprint Co. LLC (7779); SP Recycling Corporation (2936); and SEP Technologies, L.L.C. (2955).

3. Except as otherwise set forth in this Declaration, all facts set forth herein are based upon my personal knowledge, information supplied or verified to me by other members of the Debtors' senior management, my review of relevant documents, and/or my opinion based upon my experience and knowledge of the Debtors' operations, financial condition, and capital structure.

4. I submit this Declaration in support of the *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Post-Petition Secured Financing Pursuant to Bankruptcy Code §§ 105, 361, 362, 364, and 50 and (B) to Utilize Cash Collateral Pursuant to Bankruptcy Code § 363; (II) Granting Liens and Super-Priority Claims; (III) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to Bankruptcy Code §§ 361, 362, 363, and 364; and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rule 4001* (the "Motion").<sup>2</sup>

5. As of the Petition Date, approximately \$41 million was outstanding under the Debtors' pre-petition revolving credit facility, and approximately \$213 million, including capitalized unpaid interest, was outstanding under the Debtors pre-petition term loan facility.

6. Like other companies in the newsprint and paper-related industries, a variety of external factors have led to a decline in the Debtors' revenue over the last several years, while at the same time the cost of necessary raw materials has increased. In response, the Debtors undertook cost-cutting and other measures, but nonetheless it is my understanding that they fell out of compliance with certain covenants under their Pre-Petition Credit Agreement with the Pre-Petition Lenders and have otherwise been in default thereunder since June 2011. For several months, the Debtors engaged in restructuring discussions among, and entered into forbearance agreements with, the Pre-Petition Lenders.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

7. On the Petition Date, the Debtors sought authorization to use cash collateral pending the negotiation of a DIP facility with certain of the Pre-Petition Lenders. The Debtors and the Pre-Petition Lenders reached a consensual arrangement pursuant to which the Debtors were authorized to use cash collateral, subject to the terms of the Interim Cash Collateral Order.

8. I understand that the Interim Cash Collateral Order is set to expire by its terms on December 16, 2011, and the Debtors accordingly will require a new source of funding at such time. The Debtors' business requires access to a reliable and substantial source of liquidity to continue normal business operations, maintain business relationships with suppliers and customers, pay employees, and satisfy other working capital and operational needs, all of which are vital to preserving and maintaining the Debtors' going-concern value. Currently-available and projected Cash Collateral is insufficient to meet those needs for a sustained period of time.

9. The Debtors have, with the assistance of APS, analyzed their cash needs in an effort to determine what is necessary to maintain their operations in Chapter 11 with the goal of working toward a going-concern sale. In undertaking this analysis, the Debtors and their advisors have considered the impact of the current economic outlook for the newsprint industry on the Debtors' near-term projected financial performance. The Debtors and APS have worked to develop a cash-flow forecast that considers the cash flow needs of the Debtors.

10. The Debtors considered the potential availability of post-petition financing to meet their liquidity needs from sources other than the Pre-Petition Lenders. In light of the fact that the Pre-Petition Lenders would have to have their liens primed and my understanding that the Pre-Petition Lenders are unwilling to consent to the priming of their liens, the Debtors determined that it was in their best interests to solicit proposals for post-petition financing from the Pre-Petition Lenders. I am convinced that no lender would be willing to provide a stand-

alone DIP facility to which the Pre-Petition Lenders would consent or for which the Debtors could otherwise obtain approval in a timely manner, and I understand that obtaining such financing without consent would likely have resulted in an expensive, difficult, and distracting priming fight, as well as a similarly-contentious battle over the use of Cash Collateral. Based on these factors, I believe that the only feasible option for post-petition financing was to pursue a consensual deal with the Pre-Petition Lenders (ultimately, as the DIP Lenders) led by GECC.

11. The Debtors and the DIP Lenders conducted extensive and arms'-length negotiations with the DIP Lenders over the terms of the DIP Loan Documents. These negotiations culminated in mutual agreement on the terms of the DIP Financing. I believe that these terms are the most advantageous that are available to the Debtors at the present time. The Debtors believe they would be unable to find alternative or better financing on more beneficial terms than those of the DIP Financing. Based on these factors, I believe that the DIP Financing is in the best interests of the Debtors and their estates.

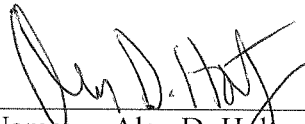
12. I believe that the DIP Financing, as proposed, will provide the Debtors with working capital to operate in Chapter 11 and preserve the value of their business while they engage in an orderly going-concern sale process. Further, I also believe that the DIP Financing would reasonably address the Debtors' near term liquidity needs and constitutes the best financing option available to them given the circumstances of these Cases. I believe that an orderly going-concern sale process is the best option available at this time for the Debtors to preserve value and maximize the recovery for the benefit of all parties-in-interest.

13. Without the immediate access to the DIP Facility and continual use of Cash Collateral, the Debtors may effectively be forced to shut down their operations and potentially liquidate their assets in a disorderly fashion. Accordingly, it is essential that the Debtors be

authorized to access the DIP Financing to provide the necessary working capital to operate as a viable going concern and to maximize value.

14. As stated above, the DIP Financing, as proposed, is the culmination of an arms'-length process to negotiate the best financing options available to the Debtors. After appropriate investigation and analysis, I am of the opinion that the DIP Financing provides the best alternative available under the circumstances of these Cases to provide the Debtors with the opportunity to function and maintain going-concern value, while marketing their assets and maximizing value for parties-in-interest. I also believe that entering into the DIP Financing is a sound exercise of the Debtors' business judgment and is in the best interest of the Debtors' estates.

Dated: December 15, 2011



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Name: Alan D. Holz  
Title: Vice President-Restructuring