



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: October 20, 2017.

**TONY M. DAVIS
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In re:	§	
	§	
Medapoint, Inc.,	§	Case No. 17-10876
	§	
Debtor.	§	(Chapter 11)

ORDER REGARDING POST-PETITION FINANCING

On this date, there came on for consideration the Motion To Approve Post-Petition Financing in Accordance with FRBP 4001(c) (the “**Financing Motion**”), filed by Medapoint, Inc. (the “**Debtor**”), seeking, inter alia, pursuant to Sections 362 and 364(c)(1), and (3) of Title 11 of

the United States Code, as amended (the “**Bankruptcy Code**”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

The Debtor and Medapoint D.I.P. Financing SPV LLC (“**Lender**”) have negotiated in good faith, and the Debtor has represented to the Court that the Debtor has agreed in good faith to the terms and conditions of this Order Regarding Post-Petition Financing (this “**Financing Order**”). The Court finds notice to have been sufficient and appropriate under the particular circumstances as required under the Bankruptcy Rules. The parties hereto have stipulated and agreed as follows, and based upon the pleadings, proffers of evidence, and representations of counsel, the Court hereby approves and adopts such stipulations, as evidenced by the signatures hereto of the Debtor, and Lender's counsel, and agreements as findings of fact and conclusions of law, as appropriate, and grants the relief requested herein, in order to prevent immediate and irreparable harm to the Debtor’s estate, and hereby ORDERS:

A. STATEMENT OF JURISDICTION

1. This Court has jurisdiction over the Financing Motion pursuant to 28 U.S.C. §§ 1334 and 157. Consideration of the Financing Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

B. NOTICE

2. Sufficient and adequate notice of the Financing Motion and the hearing with respect thereto has been given to prevent immediate and irreparable harm pursuant to Bankruptcy Rules 2002, 4001(c), and 9006, and as required by the Bankruptcy Code §§ 102, 362, and 364. No further notice of, or hearing on, the relief sought in the Financing Motion is necessary or required.

C. FACTUAL BACKGROUND

3. The Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on July 17, 2017 (the “**Petition Date**”).

4. The Debtor is a provider of software solutions to emergency medical services providers throughout the United States, including one of the nation's leading private ambulance services.

D. BINDING AGREEMENT

5. The Debtor-In-Possession Credit and Security Agreement attached hereto as Exhibit A (together with the schedules, ancillary agreements related thereto, the “Post-Petition Financing Agreement”) has been negotiated at arms-length, is fair and equitable under the circumstances, and is approved for execution by the Debtor so that it is enforceable pursuant to its terms. Lender and the Debtor have acted in good faith (including, without limitation, as that term is used in Bankruptcy Code §§ 363 and 364 and otherwise) in the negotiation and preparation of this Financing Order, have been represented by counsel, and the Debtor intends to be and is bound by the terms of this Financing Order.

6. Lender is willing to provide the financing under the Post-Petition Financing Agreement to or for the benefit of the Debtor's estate only in accordance with the terms of this Financing Order. Without the use of the financing under the Post-Petition Financing Agreement, the Debtor's estate will not have the funds necessary to bridge the gap between monthly payables and revenue to afford the investment banker sufficient time to undertake and complete a marketing process, and to close any transaction.

7. The Debtor is unable to obtain unsecured credit allowable under Bankruptcy Code § 503(b)(1), or pursuant to Bankruptcy Code §§ 364(a) and (b). No source of credit for the

Debtor's estate other than the financing under the Post-Petition Financing Agreement, whether interim or otherwise, exists. Good, adequate, and sufficient cause has been shown to justify the granting of the relief requested herein.

8. Effective as of the date of the financing under the Post-Petition Financing Agreement from the Lender, Lender is entitled to and is hereby granted the liens and protections of a good faith lender under Bankruptcy Code §§ 364(c)(1) and (c)(3), and 364(e) to provide Lender with superpriority administrative claims and to secure the financing under the Post-Petition Financing Agreement, which shall include all the principal and interest under the Post-Petition Financing Agreement, plus all fees, expenses, and other costs of Lender only incurred in connection with therewith.

E. AUTHORIZATION TO INCUR CREDIT

9. Effective as of the date of the financing under the Post-Petition Financing Agreement from the Lender, the Debtor is hereby authorized to enter into and incur the financing under the Post-Petition Financing Agreement only in strict accordance with this Financing Order. This Financing Order is entered pursuant to, and shall be construed and be consistent with, Bankruptcy Code §§ 362 and 364, and Bankruptcy Rule 4001(c)(2).

10. Effective as of the date of the financing under the Post-Petition Financing Agreement from the Lender, the Lender has the authority to advance amounts to the Debtor not to exceed \$300,000.00. To the extent that Lender has provided to or for the benefit of the Debtor Post-Petition Financing prior to the entry of this Financing Order, all such amounts shall constitute authorized financing hereunder and entitled to the liens, protections, rights and interests hereunder.

11. The terms and conditions of this Financing Order shall be sufficient and conclusive evidence of the borrowing arrangements by and between the Debtor and Lender hereunder, and of

the Debtor's agreement to the terms and conditions of the financing under the Post-Petition Financing Agreement pursuant to this Financing Order for all purposes, including, without limitation, the payment of all principal and interest, and other fees, including reasonable attorneys' fees, costs, and expenses of Lender in connection with the financing under the Post-Petition Financing Agreement, and all grants of liens and security interests as provided in the Post-Petition Financing Agreement.

F. POST-PETITION SECURITY INTERESTS AND LIENS AND SUPERPRIORITY EXPENSE

12. Effective as of the date of the financing under the Post-Petition Financing Agreement from the Lender, pursuant to Bankruptcy Code §§ 364(c)(2) and (3), to secure the prompt payment and performance of any and all obligations, liabilities, and indebtedness of the Debtor's estate to Lender arising under the financing under the Post-Petition Financing Agreement hereunder, Lender shall have and is hereby granted, effective on and after the Petition Date, valid and first-priority security interests and liens, superior to all other creditors of this estate, subject only to Prior Liens (defined below), in and upon all of the personal property of the Debtor's estate, whether now owned and existing or hereafter acquired, and all products and proceeds thereof (including, without limitation, claims of the Debtor's estate against third parties for loss or damage to such property), including all accessions thereto, substitutions and replacements therefor, and wherever located, and all causes of action owned by the estate of the Bankruptcy Code or other applicable law, except for any causes of action arising under Chapter 5 of the Bankruptcy Code (collectively, the "**Collateral**").

13. The security interests in and liens of Lender on and in the Collateral shall not have priority over prior perfected, enforceable, contractual, and unavoidable liens and security interests in the property of the Debtor's estate as of the Petition Date, including the existing first-priority

liens of DSCH Capital Partners, LLC, d/b/a Far West Capital; provided, that this Financing Order is without prejudice to the rights of the Debtor to object to the validity, priority or extent of any third party liens, or the allowance of such debts secured thereby, or to institute any actions or adversary proceedings with respect thereto (collectively, the “**Prior Liens**”).

14. The automatic stay is hereby modified to the extent necessary to permit (a) Lender to commit all acts and take all actions necessary to implement the financing under the Post-Petition Financing Agreement and this Financing Order, (b) Lender to exercise its rights and remedies under Section 10.2 of the Post-Petition Financing Agreement upon the occurrence of an Event of Default (as defined in Post-Petition Financing Agreement); and (c) all acts, actions, and transfers contemplated herein, to the extent that the foregoing is consistent with the terms of this Financing Order.

15. Effective immediately upon the entry of this Financing Order, subject to the Carve-Out (defined below), the Lender is hereby granted pursuant to section 364(c)(1) of the Bankruptcy Code, allowed claims in the amount of the financing under the Post-Petition Financing Agreement and this Financing Order (the “**DIP Superpriority Claims**”), which shall be payable from and have recourse to all collateral of Lender, with priority over any and all administrative expenses and all other claims asserted against the Debtor now existing or hereafter arising of any kind whatsoever, including all other administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code subject only to the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Financing Order or any provision hereof is vacated, reversed

or stayed in any respect or, except as expressly permitted by the Post-Petition Financing Agreement, modified or amended in any matter, on appeal or otherwise.

16. Notwithstanding the foregoing, Lender's security interests and Lender's rights and DIP Superpriority Claims under the Post-Petition Financing Agreement and this Financing Order shall be subject and subordinate to a carve-out (the "**Carve-Out**") in favor of (i) any allowed or allowable fees and expenses of professionals retained pursuant to section 327 of the Bankruptcy Code by the Debtor (the "**Professionals**") to the extent incurred and accrued by such Professionals through the date immediately prior to the date of the occurrence of an Event of Default (as defined in the Post-Petition Financing Agreement), (ii) fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under Section 1930(a), Title 28, United States Code, and (iii) retainer fees paid to the Professionals prior to the Petition Date.

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COUNSEL FOR THE DEBTOR

DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

dated as of October ____, 2017

by and among

MEDAPOINT, INC.

as Borrower,

and

MEDAPOINT D.I.P. FINANCING SPV LLC

as Lender

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DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT

THIS DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Agreement**”) is dated as of October ____, 2017 by and among **MEDAPOINT, INC.**, a Texas corporation (“**Borrower**”) and **MEDAPOINT D.I.P. FINANCING SPV LLC**, a Texas limited liability company (“**Lender**”).

RECITALS

A. On July 17, 2017 (the “**Petition Date**”), the Borrower filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (defined below) in the United States Bankruptcy Court for the Western District of Texas, Austin Division (the “**Bankruptcy Court**”) and is continuing to operate its business and manage its property as a debtor and debtor-in-possession under sections 1107 and 1109 of the Bankruptcy Code.

B. The Borrower has requested that Lender provide a loan to the Borrower in the maximum aggregate amount of \$200,000.00, subject to the terms and conditions set forth herein and in the Financing Order.

C. Lender has agreed to provide a loan to the Borrower pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code on the terms and conditions of this Agreement and in the Financing Order so long as such postpetition credit obligations are secured by Liens granted, or purported to be granted, by the Borrower pursuant to this Agreement and the other Financing Documents (defined below) and given super-priority status as provided in the Financing Order.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the Borrower and Lender agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

“**Acceleration Event**” means the occurrence of an Event of Default (a) in respect of which Lender has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Lender has suspended or terminated the Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to any of subsections (v), (w), (x) (y), (z), (aa), (cc), (dd), (ee), (gg), (hh) or (ii) of Section 10.1.

“**Account Debtor**” means “account debtor”, as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

“**Accounts**” means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any “account” (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any “payment intangibles” (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, “general intangibles” (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, “supporting obligations” (as defined in the UCC), “letter-of-credit rights” (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and

records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by Borrower or to which Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

“**Affiliate**” means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person’s (other than, with respect to Lender) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term “control” of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Allowed Fees**” means, in each case with respect to the Bankruptcy Case, postpetition fees and reimbursement for distributions of professionals retained by the Borrower and/or a statutory committee of unsecured creditors allowed or otherwise payable pursuant to an order of the Bankruptcy Court, including, without limitation, pursuant to monthly fee statements, that has not been vacated, stayed, appealed or objected to by Lender, under Sections 327, 328, or 1103 of the Bankruptcy Code.

“**Anti-Terrorism Laws**” means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“**Applicable Margin**” means, with respect to the Loan and all other Obligations, fourteen percent (14%).

“**Asset Disposition**” means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party of any asset.

“**Bankruptcy Case**” means the case pending before the Bankruptcy Court under the caption *In re: Medapoint, Inc.*, Case No. 17-10876 in the United States Bankruptcy Court for the Western District of Texas, Austin Division.

“**Bankruptcy Code**” means title 11 of the United States Code, entitled “Bankruptcy”, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

“**Bankruptcy Court**” has the meaning specified therefor in the recitals to this Agreement.

“**Blocked Person**” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list or is named as a “listed person” or “listed entity” on other lists made under any Anti-Terrorism Law.

“**Borrower**” means the entity described in the first paragraph of this Agreement and each of its permitted successors and assigns.

“**Business Day**” a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by law to be closed.

“**Carve Out**” has the meaning set forth in the Financing Order.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as the same may be amended from time to time.

“**Change in Control**” means any of the following: (a) any change in the legal or beneficial ownership of the capital stock, partnership interests or membership interests, or in the capital structure, organizational documents or governing documents, of the applicable Person; (b) any pledge, assignment or hypothecation of or Lien or encumbrance on any of the legal or beneficial equity interests in the applicable Person; (c) any change in the legal or beneficial ownership or control of the outstanding voting equity interests of the applicable Person necessary at all times to elect a majority of the board of directors (or similar governing body) of each such Person and to direct the management policies and decisions of such Person; (d) the applicable Person shall cease to, directly or indirectly, own and control one hundred percent (100%) of each class of the outstanding equity interests of each Subsidiary of such Person; and (e) any “Change of Control”, “Change in Control” or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person.

“**Closing Date**” means the date of this Agreement.

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

“**Collateral**” means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of Lender, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto and in the Financing Order.

“**Collateral Records**” means books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” means all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a Lien or security interest in such real or personal property.

“**Commitment Annex**” means Annex A to this Agreement.

“**Commitment Expiry Date**” means the date that is two hundred seventy (270) days from the Closing Date.

“**Compliance Certificate**” means a certificate, duly executed by a Responsible Officer of Borrower, appropriately completed and substantially in the form of Exhibit B hereto.

“**Consolidated Subsidiary**” means, at any date, any Subsidiary the accounts of which would be consolidated with those of “parent” Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

“**Contingent Obligation**” means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a “**Third Party Obligation**”) if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) [reserved]; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so guaranteed or otherwise supported.

“**Controlled Foreign Corporation**” means “controlled foreign corporation” as defined in the Internal Revenue Code of 1986.

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

“**Credit Exposure**” means, at any time, any portion of the Loan Commitment that remains outstanding; *provided, however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

“**Credit Party**” means the Borrower, any Guarantor under a Guarantee of the Obligations or any part thereof, and any other Person (other than Lender or a participant of Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document; and “**Credit Parties**” means all such Persons, collectively.

“**Debt**” of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person, (k) obligations arising under non-compete agreements, and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business. Without duplication of any of the foregoing, Debt of the Borrower shall include the Loan.

“**Default**” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“**Deposit Account**” means a “deposit account” (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of the Borrower.

“**Deposit Account Control Agreement**” means an agreement, in form and substance satisfactory to Lender, among Lender, Borrower and each financial institution in which the Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Lender directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Lender has been given value, in each such case expressly consented to by Lender, and containing such other terms and conditions as Lender may require.

“**Dollars**” or “**\$**” means the lawful currency of the United States of America.

“**Environmental Laws**” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to the Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

“**ERISA Plan**” means any “employee benefit plan”, as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which Borrower maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**Far West Lien**” means the security interest of and lien on certain of the Borrower’s assets in favor of DSCH Capital Partners, LLC, d/b/a Far West Capital.

“**Financing Documents**” means this Agreement, any Notes, any Guarantees, the Security Documents, the Financing Order, any subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Financing Order**” means an order of the Bankruptcy Court in the Bankruptcy Case which approves the transactions contemplated by this Agreement and the other Financing Documents in form and substance acceptable to Lender, as the same may be amended, modified or otherwise supplemented from time to time in compliance with this Agreement.

“**General Intangible**” means any “general intangible” as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“**Guarantee**” by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term “**Guarantee**” used as a verb has a corresponding meaning.

“**Guarantor**” means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

“**Hazardous Materials**” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” “pollutant” or other words of similar import within the meaning of any Environmental Law, including: (a) any “hazardous substance” defined as such in (or for purposes of)

CERCLA, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls (“PCB’s”), flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

“**Hazardous Materials Contamination**” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“**Instrument**” means “instrument”, as defined in Article 9 of the UCC.

“**Intellectual Property**” means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

“**Inventory**” means “inventory” as defined in Article 9 of the UCC.

“**Investment**” means any investment in any Person, whether by means of acquiring (whether for cash, property, services, securities or otherwise), making or holding Debt, securities, capital contributions, loans, time deposits, advances, Guarantees or otherwise. The amount of any Investment shall be the original cost of such Investment *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

“**Laws**” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. “**Laws**” includes, without limitation, Environmental Laws.

“**Lender**” means the entity described in the first paragraph of this Agreement and each of its successors and assigns.

“**Lien**” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, the Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset

which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“**Litigation**” means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

“**Loan**” has the meaning set forth in Section 2.1(a).

“**Loan Commitment**” means, as of any date of determination, the aggregate Loan Commitment Amount of Lender as of such date.

“**Loan Commitment Amount**” means the dollar amount set forth opposite Lender’s name on the Commitment Annex under the column “Loan Commitment Amount”, as such amount may be adjusted from time to time.

“**Material Adverse Effect**” means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), other than the commencement of the Bankruptcy Case, whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (i) the condition (financial or otherwise), operations, business, properties or prospects of any of the Credit Parties exclusive of any impact based upon the filing of the Borrower’s bankruptcy petition, (ii) the rights and remedies of Lender under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (iii) the legality, validity or enforceability of any Financing Document, (iv) the existence, perfection or priority of any security interest granted in any Financing Document, or (v) the value of any material Collateral.

“**Material Contracts**” has the meaning set forth in Section 3.17.

“**Maximum Lawful Rate**” has the meaning set forth in Section 2.7.

“**MedaPoint SPV**” means MedaPoint D.I.P. Financing SPV LLC, a Texas limited liability company, and its successors and assigns.

“**Multiemployer Plan**” means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which the Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

“**Notes**” has the meaning set forth in Section 2.3.

“**Obligations**” means all obligations, liabilities and indebtedness (monetary (including post-petition interest, fees, obligations for costs and expense and indemnity obligations, whether or not allowable or allowed) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

“**OFAC**” means the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Ordinary Course of Business**” means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices.

“**Organizational Documents**” means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

“**Payment Account**” means the account specified on the signature pages hereof into which all payments by or on behalf of Borrower to Lender under the Financing Documents shall be made, or such other account as Lender shall from time to time specify by notice to Borrower.

“**Payroll Taxes**” means, collectively, any and all withholdings, payroll or similar taxes due from Borrower to the applicable Governmental Authorities, together with any and all interest, fees, penalties and similar amounts owing in respect thereof or relating thereto.

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

“**Pension Plan**” means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

“**Permitted Asset Dispositions**” means the following Asset Dispositions, *provided, however*, that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition: (a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale, (b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the Borrower determines in good faith is no longer used or useful in the business of Borrower, and (c) dispositions approved by Lender and the Bankruptcy Court.

“**Permitted Contest**” means, with respect to any tax obligation or other obligation allegedly or potentially owing from Borrower to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrower’s title to, and its right to use, the Collateral is not adversely affected thereby and Lender’s Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrower has given prior written notice to Lender of Borrower’s intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrower; (e) Borrower has given Lender notice of the commencement of such contest and upon request by Lender, from time to time, notice of the status of such contest by Borrower and/or confirmation of the continuing satisfaction of this definition; and

(f) upon a final determination of such contest, Borrower shall promptly comply with the requirements thereof.

“Permitted Contingent Obligations” means (a) Contingent Obligations arising in respect of the Debt under the Financing Documents; (b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business; (c) [reserved]; (d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed \$25,000 in the aggregate at any time outstanding; (f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6; and (g) other Contingent Obligations not permitted by clauses (a) through (g) above, not to exceed \$10,000 in the aggregate at any time outstanding.

“Permitted Debt” means: (a) Borrower’s Debt to Lender and each Lender under this Agreement, and the other Financing Documents; (b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business; (c) [reserved]; (d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms); (e) [reserved]; (f) Debt in the form of insurance premiums financed through the applicable insurance company; and (g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business.

“Permitted Investments” means: (a) Investments shown on Schedule 5.7 and existing on the Closing Date; (b) (i) cash equivalents, and (ii) any similar short term Investments permitted by Borrower’s investment policies, as amended from time to time, *provided, however*, that such investment policy (and any such amendment thereto) has been approved by Lender; (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business; (d) Investments consisting of travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business; (e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business; (f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of the Borrower in any Subsidiary; (g) Investments consisting of deposit accounts in which Lender has received a Deposit Account Control Agreement; and (h) [reserved].

“Permitted Liens” means: (a) deposits or pledges of cash to secure obligations under workmen’s compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA) pertaining to Borrower’s employees, if any; (b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business; (c) carrier’s, warehousemen’s, mechanic’s, workmen’s, materialmen’s or other like Liens on Collateral arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest; (d) Liens on Collateral, other than Accounts, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest; (e) attachments, appeal bonds, judgments and other similar Liens on Collateral other than Accounts, for sums not exceeding \$25,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest; (f) [reserved]; (g) Liens and encumbrances in

favor of Lender under the Financing Documents; (h) Liens on Collateral existing on the date hereof and set forth on Schedule 5.2; and (i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided, however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof.

“Permitted Modifications” means (a) such amendments or other modifications to Borrower’s Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Lender within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to Borrower’s Organizational Documents (other than those involving a change in the name of the Borrower or involving a reorganization of the Borrower under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Lender and fully disclosed to Lender within thirty (30) days after such amendments or modifications have become effective.

“Person” means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

“Postpetition” or **“postpetition”** means the time period commencing on the Petition Date and ending on the Petition Date.

“Prepetition” or **“prepetition”** means the time period prior to the Petition Date.

“Release” has the meaning set forth in 42 U.S.C. §9601(22).

“Responsible Officer” means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the Borrower acceptable to Lender.

“Restricted Distribution” means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in the Borrower or a Subsidiary of the Borrower, an Affiliate of the Borrower or an Affiliate of any Subsidiary of the Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of the Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in the Borrower or a Subsidiary of the Borrower, an Affiliate of the Borrower or an Affiliate of any Subsidiary of the Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

“SEC” means the United States Securities and Exchange Commission.

“Securities Account” means a “securities account” (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of the Borrower.

“Securities Act” means the Securities Act of 1933, as amended.

“**Security Document**” means this Agreement, the Financing Order and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Lender, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Subsidiary**” means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of the Borrower.

“**Taxes**” has the meaning set forth in Section 2.8.

“**Termination Date**” means the earlier to occur of (a) the Commitment Expiry Date, (b) any date on which Lender accelerates the maturity of the Loan pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by the Borrower in accordance with Section 2.12.

“**UCC**” means the Uniform Commercial Code of the State of Texas or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

“**United States**” means the United States of America.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis consistent with the most recent audited consolidated financial statements of the Borrower and its Consolidated Subsidiaries delivered to Lender on or prior to the Closing Date. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at “fair value”, as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to “Articles”, “Sections”, “Annexes”, “Exhibits”, or “Schedules” shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation”. Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References “from” or “through” any date

mean, unless otherwise specified, “from and including” or “through and including”, respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term “material” or the phrase “in all material respects” is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower’s and any other Credit Party’s performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Loan.

(i) Loan Amount. On the terms and subject to the conditions set forth herein, Lender hereby agrees to make to the Borrower a loan in an original principal amount equal to the Loan Commitment (“**Loan**”). The Borrower shall not have any right to reborrow any portion of the Loan that is repaid or prepaid from time to time. The Loan may be funded in multiple advances in an aggregate amount not to exceed the Loan Commitment; *provided, however,* that all such advances shall be in the amount of \$25,000.00.

(ii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) The outstanding principal amount of the Loan, together with accrued and unpaid Obligations pertaining thereto, shall become immediately due and payable in full on the Termination Date.

(B) There shall become due and payable and the Borrower shall prepay the Loan in the following amounts and at the following times:

(i) Unless Lender shall otherwise consent in writing, on the date on which any Credit Party (or Lender as loss payee or assignee) receives any casualty proceeds in excess of \$25,000 with respect to assets upon which Lender maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty), or such lesser portion of such proceeds as Lender shall elect to apply to the Obligations; and

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be

applied to the reduction of the principal balance of the Loan by Lender as provided for in Section 2.7.

Notwithstanding the foregoing and so long as no Event of Default or Default then exists: (1) any such casualty proceeds in excess of \$100,000 (other than with respect to Inventory and any real property, unless Lender shall otherwise elect) may be used by the Borrower within one hundred twenty (120) days from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as (x) prior to the receipt of such proceeds, the Borrower has delivered to Lender a reinvestment plan detailing such replacement or repair acceptable to Lender in its reasonable discretion and (y) such proceeds are deposited into an account with Lender promptly upon receipt by Borrower; and (2) proceeds of personal property asset dispositions that are not made in the Ordinary Course of Business (other than Intellectual Property, unless Lender shall otherwise elect) may be used by the Borrower within one hundred twenty (120) days from the receipt of such proceeds to purchase new or replacement assets of comparable value, *provided, however*, that such proceeds are deposited into an account with Lender promptly upon receipt by the Borrower. All sums held by Lender pending reinvestment as described in subsections (1) and (2) above shall be deemed additional collateral for the Obligations and may be commingled with the general funds of Lender.

(C) The Borrower may from time to time prepay the Loan in whole or in part.

(iii) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Loan shall be applied by Lender to the Obligations in inverse order of maturity.

(b) [Reserved].

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, the Loan and the other Obligations shall bear interest at the rate of the Applicable Margin. All accrued interest on the Loan shall be paid in arrears on the maturity of the Loan, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to the Loan shall be subject to a clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Lender.

(b) Documentation and Approval Fees and Expenses. The Borrower shall reimburse, on a current basis, all costs and expenses (including legal, financial advisor, appraisal and valuation-related fees and expenses) incurred by Lender in connection with the preparation, negotiation, documentation and court approval of this Agreement, the other Financing Documents, the Financing Order, and the Bankruptcy Case, including, without limitation, in connection with (i) the analysis, negotiation, preparation, execution, administration, delivery and termination of this Agreement, the other Financing Documents and the documents and instruments referred to herein and therein, and any amendment, amendment and restatement, supplement, waiver or consent relating hereto or thereto, whether or not any such amendment, amendment and restatement, supplement, waiver or consent is executed or becomes effective, (ii) the analysis, negotiation, and preparation of the Financing Order and any related pleadings, and any other documents filed in or prepared in connection with the Bankruptcy

Case, and the preparation for, travel to, and participation in any hearings or proceedings in connection with any of the foregoing, (iii) the enforcement of Lender's rights hereunder, or the collection of any payments owing from, the Borrower under this Agreement and/or the other Financing Documents or the protection, preservation or defense of the rights of Lender hereunder and under the other Financing Documents, and (iv) any lien, litigation and other search costs, the reasonable fees, expenses and disbursements of legal counsel for Lender, including the reasonable charges of internal legal counsel, and reasonable charges of any expert, appraiser, auditor or other consultant to Lender.

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) Wire Fees. The Borrower shall pay to Lender, on written demand, fees for incoming and outgoing wires made for the account of the Borrower, such fees to be based on Lender's then current wire fee schedule (available upon written request of the Borrower).

(j) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, the Borrower, without notice or demand by Lender, promptly shall pay to Lender, as additional compensation to Lender in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(k) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of the Loan shall be included in the calculation of interest. The date of payment of the Loan shall be excluded from the calculation of interest. If the Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(l) [Reserved].

Section 2.3 Notes. The Loan made by Lender shall be evidenced by one or more promissory notes executed by the Borrower (each, a "Note") in an original principal amount equal to Lender's Loan Commitment Amount.

Section 2.4 [Reserved].

Section 2.5 [Reserved].

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by the Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing

Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Central time) on any date shall be deemed received by Lender on such date, and any payments received in the Payment Account at or after 12:00 Noon (Central time) on any date shall be deemed received by Lender on the next succeeding Business Day.

(b) [Reserved].

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loan or any other Obligations of the Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of Texas or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the “**Stated Rate**”) would exceed the highest rate of interest permitted under any applicable law to be charged (the “**Maximum Lawful Rate**”), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, 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 at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable 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 Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loan 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. In computing interest payable with reference to the Maximum Lawful Rate applicable to 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.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loan and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, payroll, employment, property or franchise taxes and other taxes, fees, duties, levies, assessments, withholdings or other charges of any nature whatsoever (including interest and penalties thereon) imposed by any taxing authority, excluding taxes imposed on or measured by Lender’s net income by the jurisdictions under which Lender is organized or conducts business (other than solely as the result of entering into any of the Financing Documents or taking any action thereunder) (all non-excluded items being called “**Taxes**”). If any withholding or deduction from any payment to be made by the Borrower hereunder is required in respect of any Taxes pursuant to any applicable Law, then the Borrower will: (i) pay directly to the relevant authority the full amount required to be so withheld or deducted; (ii) promptly forward to Lender an official receipt or other documentation satisfactory to Lender evidencing such payment to such authority; and (iii) pay to Lender such additional

amount or amounts as is necessary to ensure that the net amount actually received by Lender will equal the full amount Lender would have received had no such withholding or deduction been required. If any Taxes are directly asserted against Lender with respect to any payment received by Lender hereunder, Lender may pay such Taxes and the Borrower will promptly pay such additional amounts (including any penalty, interest or expense) as is necessary in order that the net amount received by such Person after the payment of such Taxes (including any Taxes on such additional amount) shall equal the amount such Person would have received had such Taxes not been asserted so long as such amounts have accrued on or after the day which is one hundred twenty (120) days prior to the date on which Lender first made written demand therefor.

(b) If the Borrower fails to pay any Taxes when due to the appropriate taxing authority or fails to remit to Lender the required receipts or other required documentary evidence, the Borrower shall indemnify Lender for any incremental Taxes, interest or penalties that may become payable by Lender as a result of any such failure.

(c) [Reserved].

(d) If Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on Lender's as a consequence of Lender's obligations hereunder to a level below that which Lender could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration Lender's policies with respect to capital adequacy) then from time to time, upon written demand by Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Lender), the Borrower shall promptly pay to Lender such additional amount as will compensate Lender for such reduction, so long as such amounts have accrued on or after the day which is one hundred twenty (120) days prior to the date on which Lender first made demand therefor; *provided, however*, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(e) If Lender requires compensation under Section 2.8(d), or requires the Borrower to pay any additional amount to Lender or any Governmental Authority for the account of Lender pursuant to Section 2.8(a), then, upon the written request of the Borrower, Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loan hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (ii) would not subject Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to Lender (as determined in its sole discretion). The Borrower hereby agrees to pay all

reasonable costs and expenses incurred by Lender in connection with any such designation or assignment.

Section 2.9 [Reserved].

Section 2.10 Fraudulent Conveyance; Subordination and Subrogation.

(a) [Reserved].

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the liability of the Borrower for the Obligations and the Liens granted by the Borrower to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Lender and the Borrower agree that if the liability of the Borrower for the Obligations, or any Liens granted by the Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of the Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of the Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term “**Fraudulent Conveyance**” means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Lender is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of the Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) subject to any approval required from the Bankruptcy Court, with the written agreement of the Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of the Note or other agreement, document or instrument now or hereafter executed by the Borrower and delivered to Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any Guarantees of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Lender, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by the Borrower. Without limitations of the foregoing, with respect to the Obligations, the Borrower hereby makes and adopts each of the agreements and waivers set forth in any Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Lender shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from the Borrower or any other source, and such determination shall be binding on the Borrower. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Lender shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the Borrower.

(d) The Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Lender with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by the Borrower and delivered to Lender; (iii) failure by Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) Lender's election in the Bankruptcy Case of the application of

Section 1111(b)(2) of the Bankruptcy Code; (v) any other borrowing or grant of a security interest by the Borrower to any third party in the Bankruptcy Case; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portions of Lender's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) [Reserved].

Section 2.11 [Reserved].

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lender. In addition to the rights set forth in Section 10.2 and the Financing Order, upon or after the occurrence and during the continuance of an Event of Default, Lender may terminate this Agreement without (i) notice or (ii) further application for order of the Bankruptcy Court.

(b) Termination by Borrower. Upon at least thirty (30) days' prior written notice to Lender, the Borrower may, at their option, terminate this Agreement; *provided, however*, that no such termination shall be effective until the Borrower has (i) paid or collateralized, to Lender's satisfaction, all of the outstanding Obligations and (ii) complied with Section 2.2. Any notice of termination given by the Borrower shall be irrevocable unless Lender otherwise agrees in writing and Lender shall have no obligation to make any Loan on or after the termination date stated in such notice. The Borrower may elect to terminate this Agreement in its entirety only. No section of this Agreement may be terminated singly.

(c) Effectiveness of Termination. Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and without further application to or order of the Bankruptcy Court, all of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of the Borrower contained in the Financing Documents shall survive any such termination and Lender shall retain its Liens in the Collateral and Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations have been discharged or paid, in full, in immediately available funds. Notwithstanding the foregoing or the payment in full of the Obligations, Lender shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Lender may incur as a result of dishonored checks or other items of payment received by Lender from Borrower or any Account Debtor and applied to the Obligations, Lender shall, at its option, (i) have received a written agreement satisfactory to Lender, executed by the Borrower and by any Person whose loans or other advances to the Borrower are used in whole or in part to satisfy the Obligations, indemnifying Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Lender, in its sole discretion, may deem necessary to protect Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Lender to enter into this Agreement and to make the Loan and other credit accommodations contemplated hereby, the Borrower hereby represents and warrants to Lender that:

Section 3.1 Existence and Power. Each Credit Party is an entity as specified on Schedule 3.1, is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, has the same legal name as it appears in such Credit

Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, and has all powers and all permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such permits could not reasonably be expected to have a Material Adverse Effect. Each Credit Party is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (a) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (b) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. Other than the entry of the Financing Order, the execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party are within its powers, have been duly authorized by all necessary action pursuant to its Organizational Documents, require no further action by or in respect of, or filing with, any Governmental Authority and do not violate, conflict with or cause a breach or a default under (a) any Law applicable to any Credit Party or any of the Organizational Documents of any Credit Party, or (b) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (b), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Financing Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties and an organizational chart showing the Credit Parties and their Affiliates, each as of the Closing Date, are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Lender, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Lender and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date. All information delivered to Lender and pertaining to the financial, physical or other condition or aspect of any Credit Party is true, accurate and correct in all material respects as of such date and as of the date hereof. Since June 30, 2017, except for the filing of the Bankruptcy Case, there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Lender in writing, there is no Litigation pending against, or to the Borrower's knowledge threatened against or affecting, any Credit Party or, to the Borrower's knowledge, any party to

any Financing Document other than a Credit Party, in each case, in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Financing Documents.

Section 3.7 Ownership of Property. The Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to the Borrower's knowledge, Default, has occurred and is continuing which could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to the Borrower's knowledge, threatened against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loan have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loan to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or

interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Reserved.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, the Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of the Loan, (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Financing Documents; Brokers. Except for fees payable to Lender, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Financing Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 [Reserved].

Section 3.17 Material Contracts. Except for the Financing Documents and the other agreements set forth on Schedule 3.17 (collectively with the Financing Documents, the "**Material Contracts**"), as of the Closing Date there are no (a) employment agreements covering the management of any Credit Party, (b) collective bargaining agreements or other similar labor agreements covering any employees of any Credit Party, (c) agreements for managerial, consulting or similar services to which any Credit Party is a party or by which it is bound, (d) agreements regarding any Credit Party, its assets or

operations or any investment therein to which any of its equity holders is a party or by which it is bound, (e) real estate leases, Intellectual Property licenses or other lease or license agreements to which any Credit Party is a party, either as lessor or lessee, or as licensor or licensee (other than licenses arising from the purchase of "off the shelf" products), (f) customer, distribution, marketing or supply agreements to which any Credit Party is a party, in each case with respect to the preceding clauses (a) through (e) requiring payment of more than \$100,000 in any year or which contains any restriction which could reasonably be expected to have a Material Adverse Effect, or (g) partnership agreements to which any Credit Party is a general partner or joint venture agreements to which any Credit Party is a party. Schedule 3.17 sets forth, with respect to each real estate lease agreement to which the Borrower is a party (as a lessee) as of the Closing Date, the address of the subject property and the annual rental (or, where applicable, a general description of the method of computing the annual rental). The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to the Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of the Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to the Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of the Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property. Each Credit Party owns, is licensed to use or otherwise has the right to use, all Intellectual Property that is material to the condition (financial or other), business or operations of such Credit Party. All material Intellectual Property existing as of the Closing Date which is issued, registered or pending with any United States or foreign Governmental Authority (including, without limitation, any and all applications for the registration of any Intellectual Property with any such United States or foreign Governmental Authority) and all licenses under which the Borrower is the licensee of any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person are set forth on Schedule 3.19. Such Schedule 3.19 indicates in each case whether such registered Intellectual Property (or application therefor) is owned or licensed by such Credit Party, and in the case of any such licensed registered Intellectual Property (or

application therefor), lists the name and address of the licensor and the name and date of the agreement pursuant to which such item of Intellectual Property is licensed and whether or not such license is an exclusive license and indicates whether there are any purported restrictions in such license on the ability to such Credit Party to grant a security interest in and/or to transfer any of its rights as a licensee under such license. Except as indicated on Schedule 3.19, the applicable Credit Party is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each such registered Intellectual Property (or application therefor) purported to be owned by such Credit Party, free and clear of any Liens and/or licenses in favor of third parties or agreements or covenants not to sue such third parties for infringement. All registered Intellectual Property of each Credit Party is duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect. No Credit Party is party to, nor bound by, any material license or other agreement with respect to which any Credit Party is the licensee that prohibits or otherwise restricts such Credit Party from granting a security interest in the Borrower's interest in such license or agreement or other property. To the Borrower's knowledge, each Credit Party conducts its business without infringement or claim of infringement of any Intellectual Property rights of others and there is no infringement or claim of infringement by others of any Intellectual Property rights of any Credit Party, which infringement or claim of infringement could reasonably be expected to have a Material Adverse Effect.

Section 3.20 [Reserved].

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Lender in connection with the consummation of the transactions contemplated by the Financing Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Lender by the Borrower (or its agents) have been prepared on the basis of the assumptions stated therein.

Section 3.22 Interest Rate. The rate of interest paid under the Notes and this Agreement and the method and manner of the calculation thereof do not violate any usury or other law or applicable Laws, any of the Organizational Documents, or any of the Financing Documents.

Section 3.23 Subsidiaries. The Borrower does not own any stock, partnership interests, limited liability company interests or other equity securities except for Permitted Investments.

Section 3.24 Representations and Warranties Incorporated from Financing Documents. As of the Closing Date, each of the representations and warranties made in the Financing Documents by each of the parties thereto is true and correct in all material respects, and such representations and warranties are hereby incorporated herein by reference with the same effect as though set forth in their entirety herein, as qualified therein, except to the extent that such representation or warranty relates to a specific date, in which case such representation and warranty shall be true as of such earlier date.

Section 3.25 Appointment of a Trustee or Examiner; Liquidation. No order has been entered in the Bankruptcy Case (a) for the appointment of a Chapter 11 trustee, (b) for the appointment of an examiner with expanded powers (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1104 of the Bankruptcy Code, (c) to convert the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, or (d) to dismiss the Bankruptcy Case.

Section 3.26 Bankruptcy Case Matters.

(a) The Bankruptcy Case was commenced on the Petition Date in accordance with applicable Law and proper notice thereof.

(b) Proper notice for (i) the motion seeking approval of this Agreement, the other Financing Documents, the Financing Order, and (ii) the hearing for the approval of the Financing Order has been given. The Borrower and Guarantors (if applicable) have given, on a timely basis as specified in the Financing Order, all notices required to be given to all parties specified in the Financing Order.

(c) From and after the entry of the Financing Order, and pursuant to and to the extent provided in the Financing Order, the Liens securing the Obligations are valid and enforceable, perfected Liens on all of the Collateral of Lender with the priority required by the Financing Order with respect to all Collateral.

(d) After entry of the Financing Order, and pursuant to and to the extent permitted in the Financing Order, the Obligations will constitute allowed administrative expense claims in the Bankruptcy Case, having priority over all administrative expense claims and unsecured claims against the Borrower now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c) 726 (to the extent permitted by Law), 1113, 1114, or any other provision of the Bankruptcy Code or otherwise, as provided under Section 364(c)(1) of the Bankruptcy Code, subject only to the Carve Out.

(e) The Financing Order is in full force and effect and has not been reversed, stayed, modified, or amended.

(f) Subject to the applicable provisions of the Financing Order and Section 10.2 and Section 10.3, as the case may be, on the Termination Date, Lender shall be entitled to payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. The Borrower will deliver to Lender: (a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet and statements of income, retained earnings, and cash flow covering the Borrower's and its Consolidated Subsidiaries' consolidated operations during the period, in each case setting forth in comparative form the figures for the corresponding period of the preceding fiscal year, all in reasonable detail, certified by a Responsible Officer and in a form acceptable to Lender; (b) together with the financial reporting package described in (a) above, evidence that all Payroll Taxes have been timely and fully paid to the applicable Governmental Authorities (including, without limitation, copies of any documentation, calculations, cancelled checks, wire or ACH confirmations pertaining to the Borrower's Payroll Taxes); (c) [reserved]; (d) within five (5) days of delivery or filing thereof, copies of all statements, reports and notices made available to Borrower's security holders and copies of all reports and other filings made by the Borrower with any stock exchange on which any securities of the Borrower are traded and/or the SEC; (e) a prompt written report of any legal actions pending or threatened against the Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to the Borrower or any of its Subsidiaries of Fifty Thousand Dollars (\$50,000) or more; (f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property; and (g) budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrower, its business and the Collateral as Lender may from time to time

reasonably request. The Borrower will, within thirty (30) days after the last day of each month, deliver to Lender with the monthly financial statements in clause (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement. Promptly upon their becoming available, the Borrower shall deliver to Lender copies of all Material Contracts.

Section 4.2 Payment and Performance of Obligations. Subject to the entry of appropriate orders of the Bankruptcy Court, the Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of its respective obligations and liabilities, including all Payroll Taxes and other tax liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, Payroll Taxes and other tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, and (c) will maintain, and cause each Subsidiary to maintain appropriate reserves for the accrual of all of their respective obligations and liabilities.

Section 4.3 Maintenance of Existence. The Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, its respective existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance.

(a) The Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business becomes damaged or destroyed, the Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Lender agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Subject to entry of an appropriate order or orders of the Bankruptcy Court, the Borrower will pay or cause to be paid all Taxes on or prior to the date due, and in any event, prior to the date upon which any fine, penalty, interest or cost for nonpayment could be imposed, and furnish to Lender, upon request, receipted bills of the appropriate taxing authority or other documentation reasonably satisfactory to Lender evidencing the payment thereof. If the Borrower shall fail to pay any Taxes in accordance with this section and is not contesting or causing a contesting of such Taxes pursuant to a Permitted Contest, or if there are insufficient funds in the applicable reserves or escrows under Article 2 to pay any such Taxes, Lender shall have the right, but shall not be obligated, to pay such Taxes, and the Borrower shall repay to Lender, on written demand, any amount paid by Lender, with interest thereon from the date of the advance thereof to the date of repayment, at the rate applicable during periods of Default hereunder, and such amount shall constitute a portion of the Obligations. The Borrower shall not pay any Taxes or other obligations in installments unless permitted by applicable Laws, and shall, upon the request of Lender, deliver copies of all notices and bills relating to any Taxes or other charge covered by this section to Lender.

(c) Subject to entry of an appropriate order or orders of the Bankruptcy Court, upon completion of any Permitted Contest, the Borrower shall, and shall cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Lender proof of the completion of the contest and payment of

the amount due, if any, following which Lender shall return the security, if any, deposited with Lender pursuant to the definition of Permitted Contest.

(d) Subject to entry of an appropriate order or orders of the Bankruptcy Court, the Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Lender from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage in such amounts and with respect to such risks as Lender may request from time to time; *provided, however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document) and described in the Insurance Certificates attached hereto as Schedule 4.4 (the “**Existing Insurance Coverage**”), which Existing Insurance Coverage is deemed sufficient by Lender for purposes of this subsection (c). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Lender.

(e) In the event the Borrower fails to provide Lender with evidence of the insurance coverage required by this Agreement, Lender may purchase insurance at Borrower’s expense to protect Lender’s interests in the Collateral. This insurance may, but need not, protect the Borrower’s interests. The coverage purchased by Lender may not pay any claim made by the Borrower or any claim that is made against the Borrower in connection with the Collateral. The Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that the Borrower has obtained insurance as required by this Agreement. If Lender purchases insurance for the Collateral, the Borrower will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Lender in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance the Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. The Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Accounts or proceeds thereof.

Section 4.6 Inspection of Property, Books and Records. The Borrower will keep, and will cause each Subsidiary to keep, proper books of record in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary within six (6) months of the Closing date and, thereafter, a maximum of one (1) time every calendar quarter (unless a Default or Event of Default has occurred and is continuing) representatives of Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of the Borrower and to discuss its respective affairs, finances and accounts with its respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Lender exercising any rights pursuant to this Section 4.6 shall give the Borrower or any applicable Subsidiary commercially

reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Lender believes a Default exists.

Section 4.7 Use of Proceeds.

(a) The Borrower shall use the proceeds of Loan solely for payment of all fees, expenses and other amounts due to Lender pursuant to Section 2.2, financing ongoing debtor in possession working capital needs in accordance with this Agreement and the Financing Order, and payment of certain costs of administration of the Bankruptcy Case in accordance with the Financing Order, all subject to the terms and conditions stated in this Agreement.

(b) No portion of the proceeds of the Loan will be used for family, personal, agricultural or household use.

(c) Notwithstanding anything to the contrary set forth herein or in any other Financing Document, no portion of the Loan, the Collateral, the Carve Out funds or cash collateral of Lender, may be used to fund any activities: (i) preventing, hindering, or delaying of Lender's enforcement or realization upon any of the Collateral; (ii) using or seeking to use Lender's cash collateral or selling or otherwise disposing of any of the Collateral without the consent of Lender; (iii) using or seeking to use any insurance proceeds constituting Collateral without the consent of Lender; (iv) except as permitted under Section 5.1, incurring Debt without the prior consent of Lender; (v) objecting or challenging in any way any claims, Liens, or Collateral (including cash collateral) held by or on behalf of Lender; (vi) asserting any claims or causes of action including, without limitation, any action under Chapter 5 of the Bankruptcy Code, against Lender or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (vii) prosecuting an objection to, or contesting in any manner, or raising defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Obligations, the Liens of Lender securing the Obligations, or any other rights or interests of Lender; or (viii) taking any action which (A) has or could have the effect of adversely modifying or compromising the rights and remedies of Lender, (B) is contrary, in a manner that adverse to Lender, to any term or condition set forth in any of the Financing Documents or the Financing Order, or (C) results in the occurrence of an Event of Default.

Section 4.8 Estoppel Certificates. After written request by Lender, the Borrower, within fifteen (15) days and at its expense, will furnish Lender with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default. After written request by Lender, the Borrower, within fifteen (15) days and at its expense, will furnish Lender with a certificate, signed by a Responsible Officer of Borrower, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing Documents, as updated pursuant to such certificate, are true, accurate and complete as of the date of such certificate.

Section 4.9 Notices of Litigation and Defaults. The Borrower will give prompt written notice to Lender (a) of any litigation or governmental proceedings pending or threatened (in writing) against the Borrower or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to the Borrower or any other Credit Party or which in any manner calls into

question the validity or enforceability of any Financing Document, (b) upon the Borrower becoming aware of the existence of any Default or Event of Default, (c) if any Credit Party is in breach or default under or with respect to any Material Contract, or if any Credit Party is in breach or default under or with respect to any other contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect, (d) of any strikes or other material labor disputes pending or, to the Borrower's knowledge, threatened against any Credit Party which would reasonably be expected to have a Material Adverse Effect, (e) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property Rights of others, and (f) of all returns, recoveries, disputes and claims that involve more than \$100,000. The Borrower represents and warrants that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section 4.9 and all litigation or governmental proceedings pending or threatened (in writing) against the Borrower or other Credit Party as of the Closing Date.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of the Borrower or any other Credit Party, the Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, the Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by the Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) The Borrower will provide Lender within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Lender that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Lender's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) The Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Lender may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to establish, create, preserve, protect and perfect a first priority Lien (subject only to Permitted Liens) in favor of Lender on the Collateral (including Collateral acquired after the date hereof).

(b) Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, the Borrower will issue, in lieu thereof, a replacement Note or other applicable

Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the formation or acquisition of a new Subsidiary, the Borrower shall (i) pledge, have pledged or cause or have caused to be pledged to Lender pursuant to a pledge agreement in form and substance satisfactory to Lender, all of the outstanding shares of equity interests or other equity interests of such new Subsidiary owned directly or indirectly by the Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Lender shall agree otherwise in writing, cause the new Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Lender in order to grant Lender a first priority Lien (subject only to Permitted Liens) on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens (subject only to Permitted Liens) are required to be granted pursuant to this Agreement; (iii) unless Lender shall agree otherwise in writing, cause such new Subsidiary to either (at the election of Lender) become a borrower hereunder with joint and several liability for all obligations of the Borrower hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Lender or to become a Guarantor of the obligations of the Borrower hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Lender; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorize the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Lender, in each case, in form and substance satisfactory to Lender.

(d) Upon the request of Lender, the Borrower shall obtain a landlord's agreement from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the records relating to any Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Lender. The Borrower shall timely and fully pay and perform its postpetition obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

Section 4.12 Reserved.

Section 4.13 Reserved.

Section 4.14 Collateral Administration.

(a) All data and other information relating to Accounts or other intangible Collateral shall at all times be kept by the Borrower, at its respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Lender, and (ii) obtaining the prior written consent of Lender, which consent shall not be unreasonably withheld.

(b) Lender reserves the right to notify Account Debtors that Lender has been granted a Lien upon all Accounts.

(c) The Borrower will use commercially reasonable efforts to at all times keep its furniture, fixtures, equipment, and machinery in good repair and physical condition. In addition to the foregoing, from time to time, Lender may require the Borrower to obtain and deliver to Lender appraisal

reports in form and substance and from appraisers reasonably satisfactory to Lender stating the then current fair market values of all or any portion of the furniture, fixtures and equipment owned by the Borrower or any Subsidiaries.

Section 4.15 Reserved.

Section 4.16 Bankruptcy Reports. Promptly after the sending, receiving or filing thereof, (a) copies of all bankruptcy reports as may be required by (i) the Bankruptcy Court, (ii) the Bankruptcy Code, and/or (iii) the Federal Rules of Bankruptcy Procedure, and (b) any motions, affidavits, statements and other documents that the Borrower files or otherwise transmits to or receives from the Bankruptcy Court in connection with the Bankruptcy Case, including all correspondence with the Bankruptcy Court, shall be delivered to Lender.

ARTICLE 5 - NEGATIVE COVENANTS

The Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Restricted Distributions. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Distribution.

Section 5.4 Restrictive Agreements. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Restricted Distributions to the Borrower or any Subsidiary; (ii) pay any Debt owed to the Borrower or any Subsidiary; (iii) make loans or advances to the Borrower or any Subsidiary; or (iv) transfer any of its property or assets to the Borrower or any Subsidiary.

Section 5.5 [Reserved].

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. Without the consent of the Lender, the Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. Without the consent of the Lender, the Borrower will not suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly (a) acquire or enter into any agreement to acquire any assets other than in the Ordinary Course of Business or as permitted under clause (h) of the definition of Permitted Investments; (b) engage or enter into any agreement to engage in any joint venture or partnership with any other Person; or (c) acquire or own or enter into any agreement to acquire or own any Investment in any Person other than Permitted Investments.

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower. For the avoidance of doubt, at no time shall the Borrower extend any credit to, be owed any trade payable from or be owed any other amount pursuant to any other financing or lending arrangement from, any Affiliate other than as set forth on Schedule 5.8.

Section 5.9 Modification of Organizational Documents. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) could reasonably be expected to be adverse to the rights, interests or privileges of Lender or its ability to enforce the same; (c) results in the imposition or expansion in any material respect of any obligation of or restriction or burden on the Borrower or any Subsidiary; (d) reduces in any material respect any rights or benefits of the Borrower or any Subsidiaries (it being understood and agreed that any such determination shall be in the sole discretion of Lender); or (e) limits the right of the Borrower to receive any payments on the Closing Date. The Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Lender reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and the Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Lender.

Section 5.11 Conduct of Business. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. The Borrower will not, nor will the Borrower permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Lease Payments. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, the Borrower or any Subsidiary sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. The Borrower represents and warrants that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of the Borrower as of the Closing Date. At all times that any Obligations remain outstanding, the Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Lender hereby notifies the Borrower that pursuant to the requirements of Anti-Terrorism Laws, and Lender's policies and practices, Lender is required to obtain, verify and record certain information and documentation that identifies the Borrower and its principals, which information includes the name and address of the Borrower and its principals and such other information that will allow Lender to identify such party in accordance with Anti-Terrorism Laws. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. The Borrower shall immediately notify Lender if the Borrower has knowledge that any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. The Borrower will not, nor will the Borrower permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Financing Order; Administrative Expense Priority; Payments.

(a) The Borrower will not seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Financing Order, except for modifications and amendments joined in or agreed to in writing by Lender.

(b) The Borrower will not will suffer to exist at any time a priority for any administrative expense or unsecured claim against the Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code) equal or superior to the priority of Lender in respect of the Obligations, except for the Carve Out.

(c) Prior to the date on which the Obligations have been indefeasibly paid in full, all in accordance with the terms of this Agreement, and this Agreement has been terminated, the Borrower will not (i) pay any administrative expenses pursuant to Section 503(b) of the Bankruptcy Code, except (A) administrative expenses incurred in the Ordinary Course of Business of the Borrower or approved by an order of the Bankruptcy Court and (B) Allowed Fees payable under Section 330 and 331 of the Bankruptcy Code, or (ii) permit or seek to permit the granting of adequate protection in favor of any Person.

(d) Except as provided in the Financing Order, the Borrower will not waive any claims under Section 506(c) of the Bankruptcy Code, or take any other action Lender deems adverse to Lender or its rights and remedies under the Financing Documents.

Section 5.17 Bankruptcy Actions.

(a) The Borrower shall not enter into any agreement to return any of its inventory or other Collateral outside the Ordinary Course of Business to any of its creditors for application against any prepetition Debt prepetition trade payables, or other prepetition claims under Section 546(h) of the Bankruptcy Code.

(b) The Borrower shall not make (i) any payments on account of any creditor's claims against the Borrower, (ii) payments on account of claims or expenses arising under Section 503(b)(9) of the Bankruptcy Code, (iii) payments in respect of a reclamation program, or (iv) payments under any management incentive plan or on account of claims or expenses arising under Section 503(c) of the Bankruptcy Code, except in each case, in amounts and on terms and conditions that are approved by order of the Bankruptcy Court and otherwise approved by Lender in writing.

(c) The Borrower shall not obtain, or seek to obtain, any stay on the exercise of the remedies of Lender hereunder, under any Financing Document or the Financing Order.

ARTICLE 6 – RESERVED.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions. The obligation of Lender to make the Loan shall be subject to the receipt by Lender of each agreement, document and instrument prepared by Lender or its counsel, each in form and substance satisfactory to Lender, and such other deliverables reasonably requested by Lender, and to the satisfaction of the following conditions precedent, each to the satisfaction of Lender and its respective counsel in their sole discretion:

(a) with respect to any draw on the Loan, the Financing Order shall be in effect and shall not have been reversed, modified, amended or stayed, and no motion seeking a reversal, modification, amendment or stay shall have been filed by any Person;

(b) [reserved];

(c) Lender shall have received the Financing Documents duly executed by an authorized officer of the Borrower and other parties thereto;

(d) evidence of the consummation of the transactions (other than the funding of the Loan and the closing of any acquisition for which the proceeds of the Loan are purchase money) contemplated by the Financing Documents;

(e) the payment of all fees, expenses and other amounts due and payable under each Financing Document and the Financing Order;

(f) other than the filing of the Bankruptcy Case, since June 30, 2017, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or any seller of any assets or business to be purchased by the Borrower contemporaneous with the Closing Date, or any event or condition which could reasonably be expected to result in such a material adverse change;

(g) [reserved];

(h) [reserved]; and

(i) no existence of any default or event of default in any of the Borrower's obligations under any Material Contract.

Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Financing Document and each other document, agreement and/or instrument required to be approved by Lender on the Closing Date.

Section 7.2 [Reserved].

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Lender in its sole discretion), Lender shall have the right to perform, all at the Borrower's expense, the searches described in clauses (a), (b), and (c) below against the Borrower and any other Credit Party, the results of which are to be consistent with the Borrower's representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to any and all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 [Reserved].

ARTICLE 8 – [RESERVED]

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations and without limiting any other grant of a Lien and security interest in any Security Document, the Borrower hereby assigns and grants to Lender a continuing first priority Lien (subject only to Permitted Liens) on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) Schedule 9.2 sets forth (i) each chief executive office and principal place of business of the Borrower and each of its respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of the Borrower regarding any of the Collateral are kept, which such Schedule 9.2 indicates in each case which the Borrower has Collateral and/or books and records located at such address, and, in the case of any such address not owned by the Borrower, indicates the nature of such location (e.g., leased business location operated by Borrower, third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(b) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of the Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the entry of the Financing Order, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of

any other Person is required for (i) the grant by the Borrower to Lender of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Lender of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Lender or exercise of rights by Lender shall violate or cause a default under any agreement between the Borrower and any other Person relating to any such collateral, including any license to which the Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by the Borrower or any other Person.

(c) As of the Closing Date, the Borrower has no any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of the Borrower disclosed on Schedule 3.4) and the Borrower shall give notice to Lender promptly (but in any event not later than the delivery by the Borrower of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by the Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property. No Person other than Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which the Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of the Borrower is maintained).

(d) The Borrower shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless the Borrower has given at least thirty (30) days prior written notice to Lender of its intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and has executed any and all documents, instruments and agreements and taken any other actions which Lender may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Lender with respect to the Collateral: (i) change the legal name or organizational identification number of the Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of the Borrower or any Credit Party or allow the Borrower or any Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for the Borrower or such Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its records concerning the Collateral or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(e) The Borrower shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to such Account) without the prior written consent of Lender. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Lender after the occurrence and during the continuance of an Event of Default, Lender shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of the Borrower with respect to the obligation of any Account Debtor to make payment or otherwise render performance to the Borrower and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(f) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) The Borrower shall deliver to Lender all tangible Chattel Paper and all Instruments and documents owned by the Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Lender. The Borrower shall provide Lender with “control” (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by the Borrower and constituting part of the Collateral by having Lender identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. The Borrower also shall deliver to Lender all security agreements securing any such Chattel Paper and securing any such Instruments. The Borrower will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Lender, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Lender created pursuant to this Agreement and the Security Documents. The Borrower shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of the Borrower.

(ii) the Borrower shall deliver to Lender all letters of credit on which the Borrower is the beneficiary and which give rise to letter of credit rights owned by the Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Lender. The Borrower shall take any and all actions as may be necessary or desirable, or that Lender may request, from time to time, to cause Lender to obtain exclusive “control” (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Lender.

(iii) The Borrower shall promptly advise Lender upon the Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and the Borrower shall, with respect to any such commercial tort claim, execute and deliver to Lender such documents as Lender shall request to perfect, preserve or protect the Liens, rights and remedies of Lender with respect to any such commercial tort claim.

(iv) Except for Accounts and Inventory in an aggregate amount of less than \$25,000, no Accounts or Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of the Borrower’s agents or processors without prior written notice to Lender and the receipt by Lender, if Lender has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Lender prior to the commencement of such possession or control. The Borrower has notified Lender that Inventory is currently located at the locations set forth on Schedule 9.2. The Borrower shall, upon the request of Lender, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Lender created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Lender’s account subject to Lender’s instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Lender’s benefit.

(v) The Borrower shall cause all equipment and other tangible personal property other than Inventory to be maintained and preserved in the same condition, repair and in

working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Lender, the Borrower shall promptly deliver to Lender any and all certificates of title, applications for title or similar evidence of ownership of all such tangible personal property and shall cause Lender to be named as lienholder on any such certificate of title or other evidence of ownership. The Borrower shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Lender.

(vi) The Borrower hereby authorizes Lender to file without the signature of the Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Lender as the “secured party” and the Borrower as the “debtor” and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as “all assets” of the Borrower now owned or hereafter acquired), in such jurisdictions as Lender from time to time determines are appropriate, and to file without the signature of the Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Lender to perfect, preserve or protect the Liens, rights and remedies of Lender with respect to the Collateral. The Borrower also ratifies its authorization for Lender to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, the Borrower does not hold, and after the Closing Date, the Borrower shall promptly notify Lender in writing upon creation or acquisition by the Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Lender, the Borrower shall take such steps as may be necessary or desirable, or that Lender may request, to comply with any such applicable Law.

(viii) The Borrower shall furnish to Lender from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Lender may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an “**Event of Default**”:

(a) (i) the Borrower shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 4.2, Section 4.4(c), Section 4.6 and Article 5, or (iii) there shall occur any default in the performance of or compliance with Section 4.1 and the Borrower has received written notice from Lender of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which

no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Lender within fifteen (15) days after the earlier of (i) receipt by Borrower of notice from Lender of such default, or (ii) actual knowledge of the Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loan), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loan), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, to cause, Debt or other liabilities having an individual principal amount in excess of \$25,000 or having an aggregate principal amount in excess of \$25,000 to become or be declared due prior to its stated maturity;

(e) [reserved];

(f) [reserved];

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$25,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 302(f) of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$25,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of \$50,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) the Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) [reserved];

(n) the occurrence of any fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect, if such default shall have continued unremedied for a period of ten (10) days after written notice from Lender;

(o) Lender determines, after at least five (5) Business Days advance notice to Borrower, and based on information available to it and in its reasonable judgment, that there is a reasonable likelihood that the Borrower shall fail to comply with one or more financial covenants in Article 6 during the next succeeding financial reporting period; *provided* that the Borrower may deliver evidence of likely compliance with such financial covenants during such five (5) Business Day period;

(p) there shall occur any default or event of default under any other Financing Document;

(q) other than prepetition defaults and the commencement of the Bankruptcy Case, there shall occur any default or event of default under, or any termination or expiration of, any operating lease;

(r) [reserved];

(s) The United States Internal Revenue Service institutes any action against the Borrower to recover any taxes owed to the United States Internal Revenue Service (other than the filing of proofs of claim in the Bankruptcy Case);

(t) there shall occur a material adverse change in the financial condition or business prospects of the Borrower, or if Lender in good faith deems Lender insecure as a result of acts or events bearing upon the financial condition the Borrower or the repayment of the Note, which default shall have continued unremedied for a period of ten (10) Business Days after written notice from Lender;

(u) if (i) the Bankruptcy Case is converted to a case under Chapter 7 of the Bankruptcy Code, or (ii) the Bankruptcy Case is dismissed;

(v) if a Chapter 11 trustee or an examiner with enlarged powers relating to the operations of the Borrower's business (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code) is appointed pursuant to Section 1104 of the Bankruptcy Code in the Bankruptcy Case;

(w) except with respect to the Carve Out, (i) if any super-priority administrative expense claim or any Lien that is *pari passu* with or senior to those of Lender is granted to any Person other than Lender (except for the Far West Lien), or (ii) the authorization to use cash collateral other than as set forth in the Financing Order;

(x) if any Person other than Lender is granted relief from the automatic stay provided for in the Bankruptcy Case, or such automatic stay is otherwise modified, to permit enforcement of rights by such Person with respect to any asset of the Borrower or any Guarantor (if applicable) unless otherwise consented to in writing by Lender;

(y) if the Borrower's or any Guarantor's (if applicable) Board of Directors shall authorize the liquidation of the Borrower's or any Guarantor's business pursuant to one or more Section 363 sales or otherwise, or shall file any motion under Section 363 of the Bankruptcy Code, or as otherwise consented to in writing by Lender, unless the proceeds of such liquidation pay off the Obligations;

(z) if the Borrower or any Guarantor (if applicable) shall fail to comply with or perform any of the terms, conditions, covenants or other obligations under the Financing Order;

(aa) the failure of the Closing Date to occur within fifteen (15) Business Days after entry of the Financing Order without the prior written consent of Lender;

(bb) [reserved];

(cc) any assumption or rejection of any material executory contract without the prior written consent of Lender;

(dd) the amendment, modification, reversal, revocation, issuance of a stay or order to vacate or supplement the Financing Order, or any other order of the Bankruptcy Court affecting this Agreement, any other Financing Document, or the transactions contemplated hereby or thereby, in each case, in any manner not acceptable to Lender;

(ee) [reserved];

(ff) [reserved]; or

(gg) if any plan of reorganization or pleading with respect to a sale of all or substantially all of the Borrower's assets is executed, filed, delivered, or any confirmation order is entered which does not provide for repayment in full in cash of all Obligations.

Notwithstanding the foregoing, if any Credit Party fails to comply with any same provision of this Agreement two (2) times prior to the Commitment Expiry Date and Lender has given to the Borrower in connection with each such failure any notice to which the Borrower would be entitled under this Section 10.1 before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Lender thereupon may exercise any remedy set forth in this Article 10 without affording the Borrower any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Loan Commitment. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Order, upon the occurrence and during the continuance of an Event of Default, Lender may, without seeking relief from the automatic stay or further orders from the Bankruptcy Court, (a) by notice to the Borrower suspend or terminate the Loan Commitment and the obligations of Lender with respect thereto, in whole or in part, and/or (b) by notice to the Borrower declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and the Borrower will pay the same; *provided, however*, that in the

case of any of the Events of Default specified in subsections (a), (v), (w), (y), (z), (aa), (bb), (cc), (dd), (ee), (gg), (hh) or (ii) of Section 10.1 above, without any notice to the Borrower or any other act by Lender, the Loan Commitment and the obligations of Lender with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived the Borrower and the Borrower will pay the same.

Section 10.3 Additional Remedies.

(a) Upon the Lender being granted relief from the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Order, upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Lender, in addition to all other rights, options, and remedies granted to Lender under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law, including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of the Borrower's premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of the Borrower's original books and records, to obtain access to the Borrower's data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Lender deems appropriate, without any liability for rent, storage, utilities, or other sums, and the Borrower shall not resist or interfere with such action (if the Borrower's books and records are prepared or maintained by an accounting service, contractor or other third party agent, the Borrower hereby irrevocably authorize such service, contractor or other agent, upon notice by Lender to such Person that an Event of Default has occurred and is continuing, to deliver to Lender or its designees such books and records, and to follow Lender's instructions with respect to further services to be rendered);

(iii) the right to require the Borrower at its sole cost and expense to assemble all or any part of the Collateral and make it available to Lender at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrower's mail to an address designated by Lender and to receive, open and dispose of all mail addressed to the Borrower; and/or

(v) the right to enforce the Borrower's rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Lender's own name and to charge the collection costs and expenses, including attorneys' fees, to the Borrower, and (ii) the right, in the name of Lender or any designee of Lender or the Borrower, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of the Borrower's compliance with applicable Laws. The Borrower shall cooperate fully with Lender in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts

between Lender and applicable federal, state and local regulatory authorities having jurisdiction over the Borrower's affairs, all of which contacts the Borrower hereby irrevocably authorizes.

(b) Upon the Lender being granted relief from the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Order, the Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Lender without prior notice to the Borrower. At any sale or disposition of Collateral, Lender may (to the extent permitted by applicable Law) purchase all or any part of the Collateral, free from any right of redemption by the Borrower, which right is hereby waived and released. The Borrower covenants and agrees not to interfere with or impose any obstacle to Lender's exercise of its rights and remedies with respect to the Collateral. Lender shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Lender may sell the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Lender sells any of the Collateral upon credit, the Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Lender may resell the Collateral and the Borrower shall be credited with the proceeds of the sale. The Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, the Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Note, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of the Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which the Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, the Borrower's labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Lender's exercise of its rights under this Article, the Borrower's rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Lender's benefit.

Section 10.4 Terminated Use of Cash Collateral. Without limitation of any of the remedies set forth in this Agreement and the other Financing Documents, upon the occurrence and during the continuance of any Event of Default, or upon the occurrence of the Termination Date, the Borrower or Guarantor shall not have any right to use or seek to use any cash collateral (as defined in Section 363(a) of the Bankruptcy Code) in which Lender has an interest.

Section 10.5 Default Rate of Interest. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Order, at the election of Lender, after the occurrence of an Event of Default and for so long as it continues, the Loan and other Obligations shall bear interest at rates that are four percent (4.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided, however*, that in the case of any Event of Default specified in subsections (a), (v), (w), (y), (z), (aa), (bb), (cc), (dd), (ee), (gg), (hh) or (ii) of Section 10.1 above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Lender.

Section 10.6 Setoff Rights. Upon the Lender being granted relief from the provisions of Section 362 of the Bankruptcy Code and subject to the terms of the Financing Order, during the continuance of any Event of Default, Lender is hereby authorized the Borrower at any time or from time to time, with reasonably prompt subsequent notice to the Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by Lender or any of Lender's Affiliates at any of its offices for the account of the Borrower or any of its Subsidiaries (regardless of whether such balances are then due to the Borrower), and (b) other property at any time held or owing by Lender to or for the credit or for the account of the Borrower or any of its Subsidiaries, against and on account of any of the Obligations. The Borrower agrees, to the fullest extent permitted by law, that Lender and any of Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, the Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Lender from or on behalf of the Borrower or any Guarantor (if applicable) of all or any part of the Obligations, and, as between the Borrower on the one hand and Lender on the other, Lender shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Lender may deem advisable notwithstanding any previous application by Lender.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Lender shall apply any and all payments received by Lender in respect of the Obligations, and any and all proceeds of Collateral received by Lender, in such order as Lender may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Lender shall apply any and all payments received by Lender in respect of the Obligations, and any and all proceeds of Collateral received by Lender, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Lender with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth*, to any other indebtedness or obligations of the Borrower owing to Lender under the Financing Documents. Any balance remaining shall be delivered to the Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and the Financing Order and to the fullest extent permitted by applicable law, the Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lender on which the Borrower may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard; (ii) except as may be required under Section 10.3, all rights to notice and a hearing prior to Lender's taking possession or control of, or Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. The Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) The Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of the Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to the Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Person or Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loan or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Lender of such requirements with respect to any future disbursements of Loan proceeds and Lender may at any time after such acquiescence require the Borrower to comply with all such requirements. Any forbearance by Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loan, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Note or as a reinstatement of the Loan or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Lender as the result of an Event of Default shall not be a waiver of Lender's right to accelerate the maturity of the Loan, nor shall Lender's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, the Borrower agrees that if an Event of Default is continuing (i) Lender shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has

exhausted all remedies against the Collateral and any other properties owned by the Borrower and the Financing Documents and other security instruments or agreements securing the Loan have been foreclosed, sold and/or otherwise realized upon in satisfaction of the Borrower's obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Lender to resort to any part of the Collateral for the satisfaction of any of the Borrower's obligations under the Financing Documents in preference or priority to any other Collateral, and Lender may seek satisfaction out of all of the Collateral or any part thereof, in its sole and absolute discretion in respect of the Borrower's obligations under the Financing Documents. In addition, subject to the Financing Order, Lender shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Lender in its sole discretion, including, without limitation, the following circumstances: (i) in the event the Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Lender may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Lender may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, the Borrower waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Lender to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure the Borrower does hereby expressly consent to and authorize, at the option of Lender, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Lender may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section 10.9 as if this Section 10.9 were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Lender shall be under no obligation to marshal any assets in payment of any or all of the Obligations. To the extent that the Borrower makes any payment or Lender enforces its Liens or Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefore, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - [RESERVED]

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Financing Documents. The provisions of Article 12 shall survive the payment of the Obligations and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the “continuing” nature of any Event of Default shall not be construed as establishing or otherwise indicating that the Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Lender and the Borrower; *provided, however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3.

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved from time to time by Lender. Lender or the Borrower may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided, however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgment from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided, however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Except as required in connection with the Bankruptcy Case, each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to the Borrower's advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Lender's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by the Borrower and obtained by Lender pursuant to the requirements hereof in accordance with customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loan or Lender, *provided, however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section 12.6, "**Securitization**" shall mean (A) the pledge of the Loan as collateral security for loans to Lender, or (B) a public or private offering by Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loan. Confidential information shall include only such information identified as such at the time provided to Lender and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided, however*, Lender does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Lender under this Section 12.6 shall supersede and replace the obligations of Lender under any confidentiality agreement in respect of this financing executed and delivered by Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, the Borrower shall not assert, and the Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other

information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

(b) EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION (OR IF THE BANKRUPTCY COURT DOES NOT HAVE JURISDICTION, ANY FEDERAL OR STATE COURT OF COMPETENT JURISDICTION LOCATED IN TRAVIS COUNTY, TEXAS) TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO, ON THE ONE HAND, AND LENDER, ON THE OTHER HAND, PERTAINING TO THE AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER FINANCING DOCUMENTS; PROVIDED THAT EACH PARTY ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THE AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF LENDER. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HEREBY WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS, AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

(c) The Borrower and Lender agree that the Loan shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, Travis County, Texas.

Section 12.9 WAIVER OF JURY TRIAL. THE BORROWER AND LENDER HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE BORROWER AND LENDER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. THE BORROWER AND LENDER WARRANT AND REPRESENT THAT EACH OF THEM HAS HAD THE OPPORTUNITY TO REVIEW THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH OF THEM KNOWINGLY AND VOLUNTARILY WAIVE ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) **Publication.** Except as required in connection with the Bankruptcy Case, no Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MedaPoint SPV or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Lender prior written notice of such publication or other disclosure, or (ii) with MedaPoint SPV's prior written consent.

(b) **Advertisement.** Lender and each Credit Party hereby authorizes MedaPoint SPV to publish the name of Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MedaPoint SPV elects to submit for publication. In addition, Lender and each Credit Party agree that MedaPoint SPV may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing MedaPoint SPV shall provide the Borrower with an opportunity to review and confer with MedaPoint SPV regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MedaPoint SPV may, from time to time, publish such information in any media form desired by MedaPoint SPV, until such time that the Borrower shall have requested MedaPoint SPV cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Lender with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Lender in its sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity

(a) The Borrower hereby agrees to promptly pay (i) all reasonable costs and expenses of Lender (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Lender) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Lender of its rights

and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Lender (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all reasonable costs and expenses of Lender in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all reasonable costs and expenses of Lender in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable costs and expenses of Lender in connection with Lender's reservation of funds in anticipation of the funding of the Loan to be made hereunder; and (v) all reasonable costs and expenses incurred by Lender in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Lender is a party thereto. If Lender uses in-house counsel for any of these purposes, the Borrower further agrees that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Lender for the work performed.

(b) The Borrower hereby agrees to indemnify, pay and hold harmless Lender and the officers, directors, employees, trustees, agents, investment advisors, collateral managers, servicers, and counsel of Lender (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, reasonable costs, reasonable expenses and reasonable disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such Indemnatee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnatee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Lender) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnatee as a result of or in connection with the transactions contemplated hereby or by the other Financing Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by the Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of the Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loan, except that the Borrower shall have no obligation hereunder to an Indemnatee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnatee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, the Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of the Borrower under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWER OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Release. For the good and valuable consideration provided herein, and other than with respect to the obligations of Lender pursuant to the Financing Documents, the Borrower hereby fully, finally, absolutely, and forever releases and discharges Lender and its respective present and former directors, shareholders, officers, employees, agents, representatives, attorneys, consultants, fiduciaries, predecessors, successors, assigns, and affiliates, related corporate divisions, and their separate and respective heirs, personal representatives, attorneys, successors, assigns, and affiliates (collectively, “**Released Parties**”) from any and all actions, causes of action, claims, debts, damages, demands, liabilities, obligations, suits, judgments, executions, and expenses and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever (individually, a “**Claim**” and collectively, “**Claims**”) of any and every character, now known or unknown, direct and/or indirect, contingent or matured, of whatever kind or nature, for or because of any matter or things done, omitted or permitted to be done by any of the Released Parties, at law or in equity in respect of the Loan, this Agreement, the other Financing Documents, and the Financing Order, and the actions or omissions of Lender in respect of the Loan, this Agreement, the other Financing Documents and the Financing Order.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, provided that the Credit Parties may not assign or otherwise transfer any of their rights or obligations hereunder without the prior written consent of Lender, and any attempted assignment or transfer by any Credit Party without such consent shall be null and void. Lender may assign in whole or in part any and all of its rights and/or obligations herein to any other Person.

Section 12.18 USA PATRIOT Act Notification. Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies the Borrower, which information includes the name and address of the Borrower and such other information that will allow Lender to identify the Borrower in accordance with the USA PATRIOT Act.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this Agreement constitute an agreement executed under seal, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWER:

MEDAPOINT, INC.

By: _____
Name: _____
Title: _____

Address for Borrower:

Attn: _____
Facsimile: _____
E-Mail: _____

LENDER:

MEDAPOINT D.I.P. FINANCING SPV LLC

By: _____
Name: _____
Title: _____

Address:

1415 South Voss Road, Suite 110-109
Houston, TX 77057
Attention: Breaux Castleman
E-mail: breaux@castlemangroup.com

Payment Account Designation:

ABA #: _____
Account Name: _____
Account #: _____
Attention: _____