Docket #0226 Date Filed: 12/6/2023
United States Bankruptcy Court
Southern District of Texas
ENTERED
December 06, 2023
Nathan Ochsner, Clerk

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
ANAGRAM HOLDINGS, LLC, *et al.*,[1]	)	Case No. 23-90901 (MI)
Debtors.	)	(Jointly Administered)

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING, (B) USE CASH COLLATERAL, AND (C) GRANT LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (II) GRANTING ADEQUATE PROTECTION TO CERTAIN PREPETITION SECURED PARTIES, (III) MODIFYING THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated November 8, 2023 [Docket No. 7] (the "DIP Motion"),[2] of Anagram Holdings, LLC and each of its above-captioned affiliates (collectively, the "Debtors"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "Bankruptcy Code"), rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "Local Rules"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "Complex Case Rules" and, together with the Local Rules, the "Bankruptcy Local Rules"), seeking

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors' service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors' chapter 11 cases are not proposed to be consolidated with Party City Holdco Inc. and its affiliate debtors (collectively, "Party City") which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et. al.,* Case No. 23-90005 (DRJ) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.

[2] Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the DIP Motion or DIP Notes Indenture (as defined herein).

entry of an interim order, which was entered by this Court on November 13, 2023 [Docket No. 128] (together with all annexes, schedules, and exhibits thereto, the "Interim Order") and this final order (together with all annexes, schedules, and exhibits hereto, this "Final Order" and, together with the Interim Order, the "DIP Orders"):

- authorizing Anagram Holdings, LLC, as co-issuer, and Anagram International, Inc., as co-issuer (collectively, the "DIP Issuers") to obtain postpetition financing pursuant to a senior secured, superpriority and priming debtor-in-possession note purchase agreement, consisting of new money notes in an aggregate principal amount of $22 million (the commitments in respect thereof, the "DIP Notes Commitment" and, such notes, the "DIP Notes") from the DIP Noteholders (as defined herein), of which $10 million was made available immediately upon entry of the Interim Order (the "Interim Order Entry Date"), and the remainder shall be available following entry of this Final Order, subject to the terms and conditions set forth in the DIP Notes Purchase Agreement (as defined below) and that certain Indenture attached hereto as **Exhibit 2** (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "DIP Notes Indenture" and the facility issued thereunder, the "DIP Notes Facility") by and among the DIP Issuers, the DIP Guarantor (as defined below), GLAS Trust Company LLC, as trustee and collateral agent (in such capacities, together with their successors and permitted assigns, the "DIP Notes Trustee" and, together with the DIP Noteholders, the **"**DIP Notes Secured Parties**"**);

- authorizing the DIP Issuers to incur, and the other Debtor to guarantee (such Debtor, the "DIP Guarantor" and, together with the DIP Issuers, the "DIP Obligors") the DIP Notes and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees or premiums and trustee fees), costs, expenses and other liabilities and obligations (including indemnities and similar obligations, whether contingent or absolute) due or payable under the DIP Notes Documents (as defined below) (collectively, the "DIP Notes Obligations"), and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;

- authorizing the DIP Obligors to execute, deliver and perform under the DIP Notes Indenture, the DIP Notes Purchase Agreement, dated as of November 6, 2023, attached to the Interim Order as Exhibit 1 (as may be amended, restated, supplemented, waived, or otherwise modified from time to time, the "DIP Notes Purchase Agreement") by and among the DIP Issuers, the DIP Guarantor, and the financial institutions or other entities from time to time party thereto as "Purchasers" (the "DIP Noteholders"), and all other documents and instruments related to the DIP Notes Purchase Agreement or the DIP Notes Indenture or that may be reasonably requested by the DIP Notes Secured Parties in connection with the DIP Notes Facility (in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof, together with the DIP Notes Indenture and DIP Notes Purchase Agreement, the "DIP Notes Documents");

- authorizing the DIP Issuers, as co-borrowers, to obtain postpetition financing pursuant to the DIP ABL Agreement (as defined below) from the DIP ABL Lender (as defined below), including, without limitation, through the gradual roll-up of up to all outstanding amounts under the Prepetition ABL Loan Documents (defined below) (the "DIP ABL Facility");

- authorizing the DIP Guarantor to guarantee the DIP ABL Facility (as defined below) and all extensions of credit, financial accommodations, reimbursement obligations, fees and premiums (including, without limitation, commitment fees or premiums and agent fees), costs, expenses and other liabilities, obligations (including indemnities and similar obligations, whether contingent or absolute) and other DIP ABL Obligations (as defined below) due or payable under the DIP ABL Agreement and the other Prepetition ABL Loan Documents, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;

- authorizing the DIP Obligors to execute, deliver and perform under the DIP ABL Agreement and the other applicable documents and instruments related to the DIP ABL Agreement (including to continue to perform under Prepetition ABL Loan Documents (as defined below) as modified and incorporated herein) or that may be reasonably requested by the DIP ABL Secured Parties in connection with the DIP ABL Facility;

- in connection with, and as a necessary inducement for, the extension of the DIP ABL Facility by the DIP ABL Secured Parties (as defined below), authorizing the Roll Up (as defined below) of all of the outstanding Prepetition ABL Obligations into the DIP ABL Facility, in accordance with the Interim Order;

- subject to the Carve-Out (as defined below), and otherwise solely to the extent set forth herein, granting to (x) the DIP Notes Trustee, for the benefit of the DIP Notes Secured Parties, in respect of all DIP Notes Obligations of the DIP Obligors and (y) the Prepetition ABL Agent (as defined below) in its capacity as the administrative agent and collateral agent under the DIP ABL Facility (in such capacity, together with its successors and assigns, the "DIP ABL Agent"; and together with the Prepetition ABL Lender (as defined herein, and in its capacity as a lender under the DIP ABL Facility, together with its successors and assigns, the "DIP ABL Lender"), together with the Issuing Banks (as defined in the Prepetition ABL Credit Agreement), any agent, lender, or any affiliate of the foregoing that provides Cash Management Services, including any Bank Product Provider (as such terms are defined in the Prepetition ABL Credit Agreement), and any parties to any Hedge Agreement, including any Hedge Provider (as such terms are defined in the Prepetition ABL Credit Agreement), collectively, together with their respective successors and assigns, the "DIP ABL Secured Parties"), for the benefit of itself and the other DIP ABL Secured Parties, in respect of all of the DIP ABL Obligations of the DIP Obligors, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code;

- granting to (x) the DIP Notes Trustee, for the benefit of the DIP Notes Secured Parties, on the DIP Collateral (as defined below), and (y) the DIP ABL Agent, for the benefit of itself and the other DIP ABL Secured Parties, on the DIP Collateral, valid,

enforceable, non-avoidable and automatically perfected security interests and liens pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, which security interests and liens shall be subject to the Carve-Out and the relative rankings and priorities set forth in this Final Order, and as further set forth on **Exhibit 3** attached hereto;

- authorizing the DIP Notes Trustee, acting at the direction of the requisite DIP Noteholders under the DIP Notes Documents, and the DIP ABL Agent, acting at the direction of the Required Lenders (as defined in the DIP ABL Agreement), to take all commercially reasonable actions to implement and effectuate the terms of the DIP Orders;

- waiving (a) the Debtors' right to surcharge the Prepetition Collateral (as defined below) and the DIP Collateral (the Prepetition Collateral and the DIP Collateral, collectively, the "Collateral") pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code;

- waiving the equitable doctrine of "marshaling" and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Notes Secured Parties and the DIP ABL Secured Parties and (b) with respect to the Prepetition Collateral for the benefit of any party other than the Prepetition Secured Parties (as defined below);

- authorizing the Debtors to use proceeds of the DIP Notes Facility, the DIP ABL Facility, and Cash Collateral (as defined below) solely in accordance with the DIP Orders, the DIP Notes Documents, the DIP ABL Agreement, and the Approved Budget;

- authorizing the Debtors to pay the DIP Notes Obligations and the DIP ABL Obligations as they become due and payable in accordance with the DIP Notes Documents and the DIP ABL Agreement, respectively;

- subject to the restrictions set forth in the DIP Notes Documents, the DIP ABL Agreement, the Approved Budget, and the DIP Orders, authorizing the Debtors to use Prepetition Collateral (as defined below) and provide automatically perfected security interests and liens, superpriority claims and other adequate protection to the Prepetition Secured Parties solely to the extent of any diminution in value of their respective interests in the applicable Prepetition Collateral (including Cash Collateral), for any reason provided for in the Bankruptcy Code (collectively, the "Diminution in Value"), which liens shall have the relative priorities set forth in this Final Order, and as further set forth on **Exhibit 3** attached hereto;

- vacating and modifying the automatic stay to the extent necessary to permit the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the DIP Orders, the DIP Notes Documents, and the DIP ABL Agreement;

- waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Final Order;

The interim hearing on the DIP Motion (the "Interim Hearing") pursuant to Bankruptcy Rule 4001 having been held by this Court on November 9, 2023 and November 10, 2023, and a final hearing to consider entry of this Final Order (the "Final Hearing") having been held by this Court on [December 6, 2023] and the Court having considered the relief requested in the DIP Motion, the exhibits attached thereto, the *Declaration of Ajay Bijoor in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing; (B) Use Cash Collateral; and (C) Grant Liens and Superpriority Administrative Expense Claims; (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 8] (the "Bijoor Declaration"), and the *Declaration of Adrian Frankum in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 19] (the "First Day Declaration"), the available DIP Notes Documents and the DIP ABL Agreement (as defined below), and the evidence submitted and arguments made at the Interim Hearing and Final Hearing; and due and sufficient notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Bankruptcy Local Rules; and the Final Hearing having been held and concluded; and all objections, if any, to the relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion is necessary and otherwise is fair and reasonable, in the best interests of the Debtors and their estates, and essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Notes Documents and the DIP ABL Agreement is a sound and

prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[3]

A. *Petition Date*. On November 8, 2023 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court").

B. *Debtors in Possession*. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

C. *Jurisdiction and Venue*. The Court has core jurisdiction over these chapter 11 cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)–(b) and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. Consideration of the DIP Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order approving the relief sought in the DIP Motion consistent with Article III of the United States Constitution. Venue for these chapter 11 cases and proceedings on the DIP Motion is proper before the Court pursuant to 28 U.S.C. § 1408. The predicates for the relief sought herein are sections 105, 361, 362, 363(b), 363(c), 363(e), 363(m), 364(c), 364(d)(1), 364(e), 503 and 507 of the

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Bankruptcy Local Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1.

D. *Committee Formation*. On November 20, 2023, the United States Trustee for the Southern District of Texas (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors in these chapter 11 cases [Docket No. 172] (the "Creditors' Committee").

E. *Notice*. The Final Hearing was held pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate and sufficient notice of the DIP Motion and the Final Hearing has been provided in accordance with the Bankruptcy Code, Bankruptcy Rules and Bankruptcy Local Rules, and no other or further notice was required under the circumstances.

F. *Cash Collateral*. As used herein, the term "Cash Collateral" shall mean all of the Debtors' cash, wherever located and held, including cash in deposit accounts, that constitutes or will constitute "cash collateral" of any of the Prepetition Secured Parties, DIP Notes Secured Parties, or DIP ABL Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

G. *Debtors' Stipulations*. Subject to the provisions and limitations contained in paragraph 21 hereof, and after consultation with their attorneys and financial advisors, the Debtors hereby admit, stipulate and agree that:

(i) *Prepetition 1L Notes*. Pursuant to (i) that certain Indenture for 15.00% PIK/Cash Senior Secured First Lien Notes due 2025 (the "Prepetition 1L Notes"), dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition 1L Notes Indenture" and, collectively with the Prepetition 1L Notes Security Agreement (as defined below) and the other "Debt Documents" (as defined in the Prepetition 1L Notes Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or

otherwise modified prior to the Petition Date, the "Prepetition 1L Notes Documents") by and among (a) Anagram Holdings, LLC ("Holdings") and Anagram International, Inc. (together with Holdings, the "Prepetition Issuers"), as issuers, (b) Anagram International Holdings, Inc., as guarantor (the "Prepetition Guarantor" and, together with the Prepetition Issuers, the "Prepetition Obligors"), and (c) Computershare Trust Company, National Association, as successor to Ankura Trust Company, LLC, as trustee and collateral trustee (together with its successors and permitted assigns, the "Prepetition 1L Trustee"), and (ii) that certain First Lien Pledge and Security Agreement, dated as of July 30, 2020, by and among the Prepetition Issuers, the Prepetition Guarantor, and the Prepetition 1L Trustee (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition 1L Notes Security Agreement"), the Prepetition Issuers issued, and the Prepetition Guarantor guaranteed, the Prepetition 1L Notes to certain noteholders (the "Prepetition 1L Noteholders" and, together with the Prepetition 1L Trustee, the "Prepetition 1L Secured Parties") (the Prepetition 1L Notes and the guarantees thereof, together with all accrued but unpaid interest, fees, expenses and disbursements (including any attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, consultants' fees, financial advisors', and other professionals' fees and expenses), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing in accordance with the terms of the Prepetition 1L Notes Indenture and Prepetition 1L Notes Documents, the "Prepetition 1L Obligations");

(ii) *Prepetition 2L Notes*. Pursuant to that (i) certain Indenture for 10.00% PIK/Cash Senior Secured Second Lien Notes due 2026 (the "Prepetition 2L Notes"), dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition

Date, the "Prepetition 2L Notes Indenture" and, collectively with the Prepetition 2L Notes Security Agreement (as defined below) and the other "Debt Documents" (as defined in the Prepetition 2L Notes Indenture) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified prior to the Petition Date, the "Prepetition 2L Notes Documents") by and among (a) the Prepetition Issuers, as issuers, (b) the Prepetition Guarantor, as guarantor, and (c) Wilmington Savings Fund Society, FSB, as successor to Ankura Trust Company, LLC, as trustee, collateral trustee securities custodian, registrar, and paying agent (together with its successors and permitted assigns, the "Prepetition 2L Trustee"), and (ii) that certain Second Lien Pledge and Security Agreement, dated as of July 30, 2020, by and among the Prepetition Issuers, the Prepetition Guarantor, and the Prepetition 2L Trustee (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition 2L Notes Security Agreement"), the Prepetition Issuers issued, and the Prepetition Guarantor guaranteed, the Prepetition 2L Notes to certain noteholders (the "Prepetition 2L Noteholders" and, together with the Prepetition 2L Trustee, the "Prepetition 2L Secured Parties") (the Prepetition 2L Notes and the guarantees thereof, together with all accrued but unpaid interest, fees, expenses and disbursements (including any attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, consultants' fees, financial advisors', and other professionals' fees and expenses), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing in accordance with the terms of the Prepetition 2L Notes Indenture and Prepetition 2L Notes Documents, the "Prepetition 2L Obligations", and together with the Prepetition 1L Obligations, the "Prepetition Notes Obligations");

(iii) *Notes Intercreditor Agreement*. Pursuant to (and to the extent set forth in) that certain First/Second Lien Intercreditor Agreement, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition Notes Intercreditor Agreement"), by and among the Prepetition 1L Trustee and Prepetition 2L Trustee, the parties thereto agreed, among other things, to: (a) consent to, or not oppose, certain actions taken, or rights asserted, by the Prepetition 1L Secured Parties or Prepetition 2L Secured Parties, as applicable, and (b) refrain from taking certain actions with respect to the Collateral (as defined therein);

(iv) *Prepetition ABL Facility*. Pursuant to (x) that certain Credit Agreement dated as of May 7, 2021 attached hereto as **Exhibit 1** (as amended, supplemented, restated or otherwise modified from time to time prior to the Petition Date, the "Prepetition ABL Credit Agreement"; and, collectively with the Prepetition ABL Guaranty and Security Agreement (as defined below) and the other "Loan Documents" (as defined in the Prepetition ABL Credit Agreement) and any other agreements, instruments, and documents executed or delivered in connection therewith from time to time, including, without limitation, all Bank Product Agreements, Hedge Agreements, and Letters of Credit (as such terms are defined in the Prepetition ABL Credit Agreement), each as may be amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the Petition Date, the "Prepetition ABL Loan Documents"; and the credit facility evidenced thereby, collectively, the "Prepetition ABL Facility"), by and among (a) the Prepetition Issuers, as borrowers, (b) Wells Fargo Bank, National Association, as agent (in such capacity, together with its successors and assigns, the "Prepetition ABL Agent"; and, together with the Prepetition 1L Trustee and Prepetition 2L Trustee, the "Prepetition Representatives"), and (c) the lender from time to time party thereto (together with its

successors and assigns, the "Prepetition ABL Lender"; (i) the Prepetition ABL Lender, together with the Prepetition ABL Agent and all other holders of Prepetition ABL Obligations (as defined below) (including, without limitation, all Issuing Banks, Bank Product Providers, and Hedge Providers (as such terms are defined in the Prepetition ABL Credit Agreement)), together with their respective successors and assigns, collectively, the "Prepetition ABL Secured Parties"; and (ii) the Prepetition ABL Secured Parties, together with the Prepetition 1L Secured Parties and the Prepetition 2L Secured Parties, collectively, the "Prepetition Secured Parties"), and (y) that certain Guaranty and Security Agreement, dated as of May 7, 2021 (as amended, supplemented, restated, or otherwise modified from time to time prior to the Petition Date, the "Prepetition ABL Guaranty and Security Agreement"), by and among (a) the Prepetition Issuers, (b) the Prepetition Guarantor, as guarantor and (c) the Prepetition ABL Agent, the Prepetition Issuers and the Prepetition Guarantor, as guarantor, incurred "Obligations" (as defined in the Prepetition ABL Credit Agreement, and including, without limitation, all Letter of Credit obligations, Bank Product Obligations, Hedge Obligations, and Swap Obligations (as such terms are defined in the Prepetition ABL Credit Agreement) and all Secured Obligations (as defined in the Prepetition ABL Guaranty and Security Agreement), (collectively, the "Prepetition ABL Obligations"; and, together with the Prepetition 1L Obligations and Prepetition 2L Obligations, collectively, the "Prepetition Secured Obligations") to the Prepetition ABL Secured Parties on a joint and several basis;

(v) *ABL Intercreditor Agreement*. Pursuant to (and as and to the extent set forth in) that certain Intercreditor Agreement, dated as of May 7, 2021 (as amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time, the "Prepetition ABL Intercreditor Agreement" and, together with the Prepetition 1L Notes Documents, the Prepetition

2L Notes Documents, the Prepetition Notes Intercreditor Agreement, and the Prepetition ABL Loan Documents, the "Prepetition Debt Documents") by and among the Prepetition Obligors, the Prepetition ABL Agent, the Prepetition 1L Trustee, and the Prepetition 2L Trustee, the parties thereto agreed, among other things: (a) that the Prepetition ABL Liens (as defined below) on the ABL Priority Collateral (as defined below) are senior to the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens (as defined below) on such collateral; and (b) that the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens on the Notes Priority Collateral (as defined below) are senior to the Prepetition ABL Liens on such collateral;

(vi) *Prepetition 1L Obligations*. As of the Petition Date, the Prepetition Obligors were justly and lawfully indebted and liable to the Prepetition 1L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for the Prepetition 1L Notes in the aggregate principal amount of not less than $125,331,399.84, plus accrued and unpaid interest (including PIK interest) thereon and any fees, expenses and disbursements (including attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, consultants' fees, financial advisors' fees, and other professionals' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 1L Notes Documents), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges incurred in accordance with the Prepetition 1L Notes Documents;

(vii) *Prepetition 2L Obligations*. As of the Petition Date, the Prepetition Obligors were justly and lawfully indebted and liable to the Prepetition 2L Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for the Prepetition 2L Notes in the aggregate principal amount of not less than $108,900,584.61, plus accrued and unpaid interest (including PIK interest) thereon and any fees, expenses and disbursements (including

attorneys' fees, accountants' fees, appraisers' fees, auditors' fees, consultants' fees, financial advisors' fees, and other professionals' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition 2L Notes Documents), costs, charges, indemnities, premiums, reimbursement obligations, guarantee obligations, other contingent obligations, and other charges incurred in accordance with the Prepetition 2L Notes Documents;

(viii) *Prepetition ABL Obligations*. As of the Petition Date, the Prepetition Obligors were justly and lawfully indebted and liable to the Prepetition ABL Secured Parties without defense, challenge, objection, claim, counterclaim, or offset of any kind, for not less than $6,206,692.20 (excluding, for the avoidance of doubt, any prepayment premium to the extent not due and payable by its terms) in outstanding principal amount of Loans (as defined in the Prepetition ABL Credit Agreement) plus any accrued but unpaid interest thereon, fees, expenses (including attorneys', accountants', appraisers', and financial advisors' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition ABL Loan Documents), costs, charges, indemnities, and other Prepetition ABL Obligations incurred under the Prepetition ABL Loan Documents;

(ix) *Validity of Prepetition Secured Obligations*. The Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Obligors, as applicable, enforceable in accordance with the respective terms of the relevant Prepetition Debt Documents, and no portion of the Prepetition Secured Obligations or any payment made to the Prepetition Secured Parties or applied to or paid on account of the Prepetition Secured Obligations prior to the Petition Date is subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim (as such term is defined in the Bankruptcy Code), cause of action (including any avoidance

actions under Chapter 5 of the Bankruptcy Code), choses in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

(x) *Validity, Perfection and Priority of Prepetition 1L Notes Liens*. As of the Petition Date, pursuant to the Prepetition 1L Notes Documents, the Prepetition Obligors granted to the Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, a security interest in and continuing lien (the "Prepetition 1L Notes Liens") on substantially all of their respective assets and property, including (i) a valid, binding, properly perfected, enforceable, non-avoidable first priority security interest in and continuing lien on the Notes Priority Lien Collateral (as defined in the Prepetition ABL Intercreditor Agreement), which, for the avoidance of doubt, includes certain Cash Collateral, any other assets or property of a type that would otherwise constitute Notes Priority Lien Collateral but for the commencement of these chapter 11 cases and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising, (collectively, the "Notes Priority Collateral"), and (ii) a valid, binding, properly perfected, enforceable, non-avoidable security interest in and continuing lien on the ABL Facility Priority Lien Collateral (as defined in the Prepetition ABL Intercreditor Agreement), which, for the avoidance of doubt, includes certain Cash Collateral, any other assets or property of a type that would otherwise constitute ABL Facility Priority Lien Collateral but for the commencement of these chapter 11 cases and all proceeds, products, accessions, rents, and profits thereof, in each case, whether then owned or existing or thereafter acquired or arising (collectively, the "ABL Priority Collateral" and, together with the Notes Priority Collateral, the "Prepetition Collateral"), junior, subject and subordinate only to the liens of the Prepetition ABL Agent on the ABL Priority Collateral and the liens permitted by the Prepetition 1L Notes Documents, solely to the extent such permitted liens are (a) valid, perfected and non-avoidable on

the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (collectively, the "Prepetition 1L Permitted Senior Liens"). For the avoidance of doubt, ABL Priority Collateral does not include proceeds of any Notes Priority Collateral or any Notes Proceeds Account (as defined in the Prepetition ABL Intercreditor Agreement) and neither the Prepetition ABL Obligations nor the obligations under the DIP ABL Facility shall be secured by the proceeds of the DIP Notes deposited in the Wells Fargo Account ending in 2759 (the "DIP Notes Account"). The Prepetition ABL Secured Parties and the DIP ABL Secured Parties hereby waive any security interest in, or right of setoff or recoupment, and agree that they will not exercise any rights or remedies or control, against the DIP Notes Account or the amounts on deposit therein;

(xi) *Validity, Perfection and Priority of Prepetition 2L Notes Liens*. As of the Petition Date, pursuant to the Prepetition 2L Notes Documents, the Prepetition Obligors granted to the Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, a security interest in and continuing lien (the "Prepetition 2L Notes Liens") on substantially all of their respective assets and property, including (i) a valid, binding, properly perfected, enforceable, non-avoidable second priority security interest in and continuing lien on the Notes Priority Lien Collateral, and (ii) a valid, binding, properly perfected, enforceable, non-avoidable priority security interest in and continuing lien on the ABL Priority Collateral, junior, subject and subordinate only to (x) the liens of Prepetition ABL Agent and Prepetition 1L Trustee on the ABL Priority Collateral, (y) the liens of the Prepetition 1L Trustee on the Notes Priority Collateral, and (z) the liens permitted by the Prepetition 2L Notes Documents, solely to the extent such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence

on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (the "Prepetition 2L Permitted Senior Liens");

(xii) *Validity, Perfection and Priority of Prepetition ABL Liens*. As of the Petition Date, pursuant to the Prepetition ABL Loan Documents, the Prepetition Obligors granted to the Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, a security interest in and continuing lien (the "Prepetition ABL Liens" and, together with the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens, the "Prepetition Liens") on substantially all of their respective assets and property, including (i) a valid, binding, properly perfected, enforceable, first priority security interest in and continuing lien on the ABL Priority Collateral, and (ii) a valid, binding, properly perfected, enforceable, junior priority security interest in and continuing lien on the Notes Priority Collateral, junior, subject and subordinate only to the Prepetition 1L Notes Lien and Prepetition 2L Notes Lien on the Notes Priority Collateral and liens permitted by the Prepetition ABL Loan Documents, solely to the extent any such permitted liens are (a) valid, perfected and non-avoidable on the Petition Date, or (b) valid liens in existence on the Petition Date that are perfected subsequent to the Petition Date in accordance with section 546(b) of the Bankruptcy Code (the "Prepetition ABL Permitted Senior Liens" and, together with the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, the "Prepetition Permitted Senior Liens");

(xiii) *Waiver of Challenge*. None of the Prepetition Liens, the Prepetition Debt Documents, or the Prepetition Secured Obligations are subject to any contest, attack, rejection, recovery, reduction, defense, counterclaim, subordination, recharacterization, avoidance or other claim (as defined in the Bankruptcy Code), cause of action (including any avoidance actions under

Chapter 5 of the Bankruptcy Code or applicable state law equivalents), choses in action or other challenge of any nature under the Bankruptcy Code or any applicable non-bankruptcy law;

(xiv) *No Control*. None of the Prepetition Secured Parties control (or have in the past controlled) any of the Debtors or their respective properties or operations, have authority to determine the manner in which any Debtor's operations are conducted or are control persons or insiders of any Debtor by virtue of any actions taken with respect to, in connection with, related to or arising from any Prepetition Debt Documents;

(xv) *No Claims or Causes of Action*. No claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties and each of their respective Representatives (as defined below), in each case, in their capacity as such, under or relating to any agreements by and among the Debtors and any Prepetition Secured Party that is in existence as of the Petition Date; and

(xvi) *Release*. Each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, subsidiaries, assigns and Representatives (as defined below) (in each case, solely in their capacities as such) (collectively, the "Releasing Parties") hereby (i) reaffirms the releases granted pursuant to paragraph G.(xvi) of the Interim Order and (ii) absolutely, unconditionally and irrevocably releases and forever discharges and acquits (A) the Prepetition Secured Parties, and each of their respective Representatives (in each case, solely in their capacity as such), and (B) the DIP Notes Secured Parties, the DIP ABL Secured Parties, and each of their respective Representatives (in each case, solely in their capacity as such) (collectively, the "Released Parties"), from any and all liability to the Releasing Parties (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes

of action of any kind nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, in each case, of any kind or nature whatsoever that the Releasing Parties (or any of them) at any time had, now have or hereafter may have, or that their predecessors, successors or assigns at any time had, now have or hereafter may have, against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the entry of this Final Order, arising out of or related to the Prepetition Debt Documents, the DIP Notes Facility, the DIP Notes Documents, the DIP ABL Facility, the DIP ABL Agreement, or the negotiation thereof and the transactions and agreements reflected thereby; *provided* that the release set forth in this paragraph shall not release (1) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party's actual fraud or willful tortious misconduct or (2) any rights or obligations under this Final Order or under the DIP Notes Documents or the DIP ABL Agreement.

H. *Findings Regarding the DIP Notes Facility, the DIP ABL Facility, Roll Up, and Use of Cash Collateral.*

(i) Good and sufficient cause has been shown for the entry of this Final Order and for authorization of the DIP Obligors to obtain financing pursuant to the DIP Notes Documents and the DIP ABL Agreement.

(ii) The Debtors have demonstrated a critical need to obtain the DIP Notes Facility and the DIP ABL Facility and to use Prepetition Collateral (including Cash Collateral) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to

satisfy other working capital and operational needs and to fund administrative expenses of these chapter 11 cases. Access to sufficient working capital and liquidity under the DIP Notes Documents and the DIP ABL Agreement, and other financial accommodations provided under the DIP Notes Documents and the DIP ABL Agreement, as well as through the use of Cash Collateral in accordance with the terms thereof, the Approved Budget (as defined below), and the terms of this Final Order, is necessary to the Debtors' estates and for the preservation and maintenance of their going concern value.

(iii) The Debtors are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or secured financing on more favorable terms from sources other than the DIP Noteholders under the DIP Notes Documents and the DIP ABL Secured Parties under the DIP ABL Agreement. The Debtors are also unable to obtain secured credit without granting to the DIP Notes Secured Parties the DIP Notes Liens and the DIP Superpriority Claims (each as defined below), and to the DIP ABL Secured Parties the DIP ABL Liens and the DIP Superpriority Claims (each as defined below), and incurring the Adequate Protection Obligations (as defined herein) on the terms and subject to the conditions set forth in the DIP Orders and in the DIP Notes Documents and the DIP ABL Agreement.

(iv) The Debtors continue to collect cash, rents, income, offspring, products, proceeds, and profits generated by the Prepetition Collateral and acquire equipment, inventory and other personal property, all of which constitutes the Prepetition Secured Parties' Cash Collateral under section 363(a) of the Bankruptcy Code. The Debtors desire and need to use the Prepetition Secured Parties' Cash Collateral to fund ongoing operations and for other general corporate

purposes, subject to the terms of this Final Order, the DIP Notes Documents, the DIP ABL Agreement, and the Approved Budget.

(v) Upon the Interim Order Entry Date, all proceeds of ABL Priority Collateral in the Debtors' possession or control on or after the Petition Date (excluding, however, any ABL Priority Collateral in the Debtors' master concentration account held at Wells Fargo Bank, National Association ("Wells Fargo") ending in 2734 (the "Master Concentration Account") as of the Petition Date, proceeds of Notes Priority Collateral and amounts in the Notes Proceeds Account and the DIP Notes Account (as defined below)) have been, and will be, deposited promptly into the existing "Collection Account" as defined in and established under and to the extent required to be deposited therein under the Prepetition ABL Loan Documents (and, for the avoidance of doubt, is an account at Wells Fargo ending in 2726, the "Collection Account") and, from there, remitted on a daily basis to the Prepetition ABL Agent for application to the Prepetition ABL Obligations (the "Roll Up") until the Prepetition ABL Obligations are paid in full and, following such repayment, remitted on a daily basis to the DIP ABL Agent for application to the DIP ABL Obligations outstanding from time to time and any excess, on a daily basis, remitted to the Master Concentration Account. This gradual Roll Up of the Prepetition ABL Obligations under the Prepetition ABL Facility, subject to such amounts being available for re-borrowing as DIP ABL Obligations under the DIP ABL Facility in accordance with the terms of the DIP Orders, was authorized in consideration, and as a necessary inducement, for the Prepetition ABL Secured Parties and the DIP ABL Secured Parties to consent to the use of Cash Collateral (including to fund the Carve-Out on the terms set forth herein), provide the DIP ABL Facility, and subordinate the DIP ABL Liens (as defined below) to the Carve-Out and the DIP Notes Liens, as and to the extent set forth herein and as summarized on **Exhibit 3** hereto.

(vi) Based on the DIP Motion, the First Day Declaration, the Bijoor Declaration and the record and argument presented to the Court at the Interim Hearing and Final Hearing, the terms of the DIP Notes Facility, the terms of the DIP ABL Facility, the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 16 of this Final Order (collectively, the "Adequate Protection"), and the terms on which the Debtors may continue to use Prepetition Collateral (including Cash Collateral) pursuant to this Final Order, the DIP Notes Documents, the DIP ABL Agreement and the Approved Budget are consistent with the Bankruptcy Code, including section 506(b) thereof, are fair and reasonable, and reflect the DIP Obligors' exercise of prudent business judgment consistent with their fiduciary duties under the circumstances.

(vii) This Final Order, the DIP Notes Facility, the DIP ABL Agreement, the Adequate Protection, and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties (each of whom acted in good faith in negotiating such documents), and all of the loans and other financial accommodations extended by the DIP Notes Secured Parties to the DIP Obligors, and by the DIP ABL Secured Parties to the Debtors, under, in respect of, or in connection with, the DIP Notes Facility and the DIP Notes Documents, and the DIP ABL Facility and the DIP ABL Agreement (in each such case, including the granting of adequate protection provided herein and the Roll Up), respectively, are, and will be deemed to have been, extended by the DIP Notes Secured Parties and DIP ABL Secured Parties, respectively, in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Notes Secured Parties (and their respective successors and assigns), the DIP

ABL Secured Parties (and their respective successors and assigns), the DIP Notes Facility, the DIP ABL Facility, the DIP Notes Liens, the DIP ABL Liens, the DIP Notes Obligations, the DIP ABL Obligations, the DIP Superpriority Claims, the Adequate Protection Liens (as defined below), the Adequate Protection 507(b) Claims (as defined below), and the Adequate Protection Obligations (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the DIP Orders or any provision thereof is vacated, reversed or modified, on appeal or otherwise.

(viii) The Prepetition Secured Parties have acted in good faith regarding the DIP Notes Facility and the DIP ABL Agreement and the Debtors' continued use of the Prepetition Collateral (including Cash Collateral), including the granting of the Adequate Protection Liens (as defined below) and other Adequate Protection Obligations (as defined below), and the Prepetition Secured Parties (and their respective successors and assigns) shall be entitled to the full protection of sections 363(m) and 364(e) of the Bankruptcy Code in the event that the DIP Orders or any provision thereof is vacated, reversed or modified, on appeal or otherwise.

(ix) The Prepetition Secured Parties are entitled to the Adequate Protection as and to the extent set forth herein pursuant to sections 105, 361, 362, 363 and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to the Court, the terms of the Adequate Protection are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Prepetition Collateral, including Cash Collateral.

(x) To the extent their consent is required, the requisite Prepetition Secured Parties have consented or are deemed to have consented to the use of Prepetition Collateral, including Cash Collateral, and the (i) priming of the Prepetition 1L Notes Liens, Prepetition 2L

Notes Liens, and Prepetition ABL Liens on the Notes Priority Collateral by the DIP Notes Liens, and (ii) priming of the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens on the ABL Priority Collateral by the DIP ABL Liens, in each case on the terms set forth in the DIP Orders, the DIP Notes Documents, and the DIP ABL Agreement; *provided* that nothing in the DIP Orders, the DIP Notes Documents, or the DIP ABL Agreement shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in the DIP Orders and in accordance with the DIP Notes Facility, the DIP ABL Agreement, and the Approved Budget authorized by the DIP Orders, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering Prepetition Collateral (whether senior or junior) other than as contemplated by the DIP Orders, or (z) prejudice, limit or otherwise impair the rights of any Prepetition Secured Party to seek new, different or additional adequate protection or assert any other right, and the rights of any other party in interest, including the DIP Obligors, to object to such relief are hereby preserved subject to the Intercreditor Agreements (as defined herein).

(xi) The Debtors have prepared and delivered to the advisors to the DIP Notes Secured Parties and the DIP ABL Secured Parties an initial budget (the "Initial DIP Budget"), attached to the Interim Order as **Schedule 1**. The Initial DIP Budget reflects, among other things, the Debtors' anticipated operating receipts, operating disbursements, non-operating disbursements, net operating cash flow, and liquidity for each calendar week covered thereby. The Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Notes Indenture. Each subsequent budget, once approved by the Required DIP Noteholders in accordance with the DIP Notes Indenture, shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP

Budget or the latest subsequently approved budget, the "Approved Budget").[4] The Debtors believe that the Initial DIP Budget was (and continued to be) reasonable under the circumstances as of the date of delivery thereof. In determining to extend postpetition financing under the DIP Notes Documents, the DIP ABL Agreement and the DIP Orders, the DIP Notes Secured Parties and the DIP ABL Secured Parties are relying, in part, upon the DIP Obligors' agreement to comply with the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP Notes Documents).

(xii) Each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral;

I. *Best Interests of the Debtors' Estate*. Absent the relief granted in this Final Order, the Debtors' estates will be irreparably harmed. Consummation of the DIP Notes Facility and the DIP ABL Agreement and continued use of Prepetition Collateral (including Cash Collateral), in accordance with the DIP Orders, the DIP Notes Documents, and the DIP ABL Agreement, are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties. The DIP Motion and this Final Order comply with the requirements of Bankruptcy Local Rule 4001-1(b).

J. *Prepetition Permitted Senior Liens; Continuation of Prepetition Liens*. Nothing herein constitutes a finding or ruling by the Court that any alleged Prepetition Permitted Senior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein

[4] For the avoidance of doubt, the Approved Budget shall not be deemed to limit the Debtors' professional fees, the Creditors' Committee's professional fees, the DIP Notes Professional Fees or the DIP ABL Professional Fees.

shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Prepetition Permitted Senior Lien. For the avoidance of doubt, the right of a seller of goods to reclaim goods under section 546(c) of the Bankruptcy Code does not constitute a Prepetition Permitted Senior Lien, and such right is expressly subject to the DIP Notes Liens (as defined herein), the DIP ABL Liens (as defined herein), the Adequate Protection Liens, and the Prepetition Liens. The Prepetition Liens on the Prepetition Collateral, and the DIP Notes Liens and the DIP ABL Liens on the DIP Collateral, are in each case valid and continuing liens and the Prepetition Collateral and the DIP Collateral are and will continue to be encumbered by such liens, respectively. Based upon the DIP Motion, the foregoing findings and conclusions, and the overall record before the Court, and after due consideration, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. *[Reserved]*.

2. *Authorization of the DIP Notes Facility and the DIP Notes Documents*.

(a) The DIP Obligors were, by the Interim Order, and are hereby authorized to execute, deliver, enter into and perform all of their obligations under the DIP Notes Documents, including the granting of the DIP Notes Liens and the DIP Superpriority Claims and perfection of the DIP Notes Liens as permitted herein and under the DIP Notes Documents, and perform such other acts as may be necessary, appropriate or desirable in connection therewith. The DIP Issuers were, by the Interim Order, and are hereby authorized to issue up to $22 million in DIP Notes pursuant to the DIP Notes Indenture and the DIP Notes Purchase Agreement, and the DIP

Guarantor was, by the Interim Order, and is hereby authorized to guarantee the DIP Issuer's obligations under the DIP Notes Indenture, subject to any limitations set forth in the DIP Notes Documents. The proceeds of the DIP Notes shall be used for all purposes permitted under the DIP Notes Documents and the DIP Orders, subject to and in accordance with the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP Notes Documents).

(b) In furtherance of the foregoing and without further approval of the Court, each DIP Obligor was, by the Interim Order, and hereby is authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents, execute or record pledge and security agreements, mortgages, financing statements and other similar documents, if any, and to pay all fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable in connection with for the DIP Notes Facility, including, without limitation:

(i) the execution and delivery of, and performance under, each of the DIP Notes Documents;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Notes Documents, in each case, in such form as the DIP Notes Secured Parties may agree and on notice to counsel to the Creditors' Committee, which may be provided by email (it being understood that no further approval of the Court shall be required for any such amendments, waivers, consents or other modifications or the payment of any fees, including attorneys', accountants', appraisers' and financial advisors' fees, and other expenses, charges, costs, indemnities and other like obligations in connection therewith) that do not shorten the maturity of the DIP Notes Facility, increase the

aggregate amount of the DIP Notes Facility, increase the rate of interest or fees payable thereunder, or release any DIP Notes Liens other than in accordance with the DIP Notes Documents, except as otherwise permitted under the DIP Notes Documents. Updates, modifications, and supplements to the Approved Budget shall not require any further approval of the Court;

(iii) the non-refundable payment, whether paid pursuant to the Interim Order or this Final Order, to any of the DIP Notes Secured Parties of any fees in connection with the DIP Notes Facility (including any amendment fees, premiums, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security trustee's fees, upfront fees, closing fees, commitment premiums, exit fees, closing date fees, prepayment fees or agency fees), and any amounts due in respect of any indemnification and expense reimbursement obligations, including, without limitation, reasonable and documented fees and expenses of professionals retained by, or on behalf of, any of the DIP Notes Secured Parties (including, without limitation, those of Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel for the DIP Noteholders, and King & Spalding LLP, as legal counsel for the DIP Notes Trustee, in each case, as permitted under the DIP Notes Documents (the "DIP Notes Professional Fees")), in each case, as provided in the DIP Notes Documents, without the need to file retention or fee applications; the payment of the foregoing amounts shall be irrevocable, were approved upon entry of the Interim Order, whether any such obligations arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law; and

(iv) the performance of all acts required under or in connection with the DIP Notes Documents, including the granting of the DIP Notes Liens and the DIP Superpriority Claims and perfection of the DIP Notes Liens as permitted herein and therein, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith, in each case in accordance with the terms of the DIP Notes Documents.

3. *Authorization of DIP ABL Facility and Roll Up of Prepetition ABL Obligations*.

(a) The DIP Obligors were, by the Interim Order, and are hereby authorized to perform all of their obligations under the DIP ABL Agreement (as defined below) as provided and set forth in this Final Order, including the granting of the DIP ABL Liens (as defined below) and the DIP Superpriority Claims and perfection of the DIP ABL Liens as permitted herein and under the DIP ABL Agreement, and perform such other acts as may be necessary, appropriate or desirable in connection therewith. The DIP Obligors are authorized, on a final basis, to incur up to $15,000,000, under and subject to, the DIP ABL Agreement and to guarantee the obligations under the DIP ABL Agreement, in each case, as provided in the DIP ABL Agreement and subject to any limitations set forth therein. The proceeds of any loans or other financial accommodations extended from time to time under the DIP ABL Agreement shall be used in accordance with, and for the purposes permitted under, the DIP ABL Agreement and the DIP Orders, subject to and in accordance with the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP ABL Agreement).

(b) In furtherance of the foregoing and without further approval of the Court, each DIP Obligor was by the Interim Order and hereby is authorized and directed to perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents, execute or record pledge and security agreements, mortgages, financing statements

and other similar documents, if any, and to pay all fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable in connection with the DIP ABL Facility, including, without limitation:

(i) the performance of the DIP ABL Agreement;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP ABL Agreement, in each case, in such form as the DIP ABL Secured Parties may agree and on notice to counsel to the Creditors' Committee, which may be provided by email (it being understood that no further approval of the Court shall be required for any such amendments, waivers, consents or other modifications or the payment of any fees, including attorneys', accountants', appraisers' and financial advisors' fees, and other expenses, charges, costs, indemnities and other like obligations in connection therewith) that do not shorten the DIP ABL Facility Maturity Date (defined below), increase the aggregate amount of the DIP ABL Facility, increase the rate of interest or fees payable thereunder, or release any DIP ABL Liens other than in accordance with the DIP ABL Agreement, except as otherwise permitted under the DIP ABL Agreement;

(iii) the non-refundable payment, whether paid pursuant to the Interim Order or this Final Order, to any of the DIP ABL Secured Parties of any fees in connection with the DIP ABL Facility (including any amendment fees, premiums, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security agent's fees, upfront fees, closing fees, commitment fees, exit fees, closing date fees, prepayment fees or agency fees), and any amounts due in respect of any indemnification and expense reimbursement obligations, including, without limitation, reasonable and documented fees and expenses of professionals retained by, or on behalf of, any of the DIP ABL Secured Parties (including, without

limitation, those of Goldberg Kohn Ltd. and local legal counsel, in each case, as permitted under the DIP ABL Agreement (collectively, the "DIP ABL Professional Fees")), in each case, as provided in the DIP ABL Agreement, without the need to file any retention or fee applications; the payment of the foregoing amounts shall be irrevocable, and were approved upon entry of the Interim Order, whether any such obligations arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance, disallowance, impairment, or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law; and

(iv) the performance of all acts required under or in connection with the DIP ABL Agreement, including, without limitation, the granting of the DIP ABL Liens and the DIP Superpriority Claims and perfection of the DIP ABL Liens as permitted herein and therein, and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith from time to time, in each case, in accordance with the terms of the DIP ABL Agreement.

(c) Upon the Interim Order Entry Date, all outstanding Prepetition ABL Obligations (which, for the avoidance of doubt, will include all obligations under clauses (a), (b), (i), (ii), (iii), (iv), (v), (vi), and (vii) of the definition of "Obligations" in the Prepetition ABL Credit Agreement from time to time outstanding under the Prepetition ABL Credit Agreement and the other Prepetition ABL Loan Documents, including, without limitation, all reimbursement obligations now or hereafter owing under or in connection with any issued and outstanding Letters of Credit (as defined in the Prepetition ABL Credit Agreement), all Bank Product Obligations, all

Hedge Obligations, all Swap Obligations (as each such term is defined in the Prepetition ABL Credit Agreement), all obligations owing from time to time to any DIP ABL Secured Party (or any affiliate thereof) in respect of any Cash Management Services (as defined in the Prepetition ABL Credit Agreement), including, without limitation, interest, fees, expenses, charges, and indemnities related thereto, and all other "Secured Obligations" under the Prepetition ABL Loan Documents (collectively, the "DIP ABL Obligations")) were authorized, and are hereby authorized, subject to paragraph 21, to be irrevocably paid in cash pursuant to the Roll Up. The terms of this paragraph 3(c) are without prejudice to such relief that the Court may enter in connection with a successful and timely Challenge of the Debtors' stipulations as to the extent, validity or priority of the Prepetition ABL Obligations or the Prepetition ABL Liens.

(d) The DIP Obligors were by the Interim Order and are hereby authorized to pay, to the extent provided for in the DIP ABL Agreement, current interest during these chapter 11 cases in accordance with paragraph 36(d) hereof, and certain enumerated fees, costs, and expenses of the DIP ABL Secured Parties as set forth in paragraph 36(d) hereof and the DIP ABL Agreement (including, without limitation, DIP ABL Professional Fees and fees, costs, and expenses related to any audit, field examination, and/or valuation of the ABL Priority Collateral from time to time, as provided for in the DIP ABL Agreement) as such amounts become due and payable, without any other or further notice or the need to obtain further approval of the Court, whether or not such fees arose before, on, or after the Petition Date.

4. *DIP Notes Obligations and DIP ABL Obligations*. (a) With respect to the DIP Notes Documents, effective upon the Interim Order Entry Date and the execution and delivery of the DIP Notes Documents, and (b) with respect to the DIP ABL Agreement, effective upon the Interim Order Entry Date, but subject to the Challenge rights set forth in paragraph 21 hereof, the DIP

Notes Documents and the DIP ABL Agreement, respectively, shall constitute legal, valid, binding and non-avoidable obligations of the DIP Obligors, respectively, enforceable against each DIP Obligor and its estate in accordance with their respective terms and the DIP Orders, and any successors thereto, including any trustee appointed in these chapter 11 cases, or in any case under chapter 7 of the Bankruptcy Code upon conversion of any of these chapter 11 cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). (x) With respect to the DIP Notes Documents, effective upon the Interim Order Entry Date and the execution and delivery of the DIP Notes Documents, and (y) with respect to the DIP ABL Agreement, effective upon the Interim Order Entry Date but subject to the Challenge rights set forth in paragraph 21 hereof, the DIP Notes Obligations and the DIP ABL Obligations, respectively, shall include all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the DIP Obligors to any of the DIP Notes Secured Parties, in such capacities, under the DIP Notes Documents or to the any of the DIP ABL Secured Parties, in such capacities, under the DIP ABL Agreement, as applicable, and under the DIP Orders or secured by the DIP Notes Liens or the DIP ABL Liens, as applicable, including, without limitation, all principal, interest, costs, fees, expenses, premiums, indemnities and other amounts. The DIP Obligors are jointly and severally liable for the DIP Notes Obligations, on the one hand, and the DIP ABL Obligations, on the other hand. Except as permitted hereby and subject to the Challenge rights set forth in paragraph 21 hereof as it relates to the DIP ABL Obligations and the DIP ABL Liens, no obligation, payment, transfer, or grant of security under the DIP Orders or under the DIP Notes Documents to the DIP Notes Trustee and/or the other DIP Notes Secured Parties (including, without limitation, any DIP Notes Obligation or any DIP Notes Lien), or under the DIP Orders or under the DIP ABL Agreement to the DIP ABL Agent and/or

the other DIP ABL Secured Parties (including, without limitation, any DIP ABL Obligation or any DIP ABL Lien), respectively, shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under chapter 5 of the Bankruptcy Code (including, without limitation, sections 502(d), 544, and 547 to 550 of the Bankruptcy Code), Section 724(a) of the Bankruptcy Code, or any other provision with respect to avoidance actions under the Bankruptcy Code or otherwise under any applicable state law, including, without limitation, any state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute, or common law or foreign law equivalents), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

5. *Carve-Out.*

(a) Notwithstanding anything to the contrary in the Interim Order or this Final Order, the DIP Obligors' obligations to the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties, and the liens, security interests, and superpriority claims granted herein, under the DIP Notes Documents, the DIP ABL Agreement, and the Prepetition Debt Documents, including, without limitation, the DIP Notes Liens, the DIP ABL Liens, the DIP Superpriority Claims, the Prepetition Liens, the Prepetition Secured Obligations, the Adequate Protection Liens, and Adequate Protection Obligations shall be subject in all respects and subordinate to the Carve-Out.

(b) As used herein, the "Carve-Out" means the sum of (i) all fees required to be paid to the clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United

States Code plus interest at the statutory rate (without regard to the notice set forth in (iv) below); (ii) fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iv) below); (iii) to the extent allowed at any time, whether by interim or final compensation order or otherwise, all unpaid fees and expenses incurred relating to services rendered by persons or firms retained by the DIP Obligors (collectively, the "Debtors' Professionals") and any persons or firms retained by the Creditors' Committee (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons"), in each case, pursuant to and in accordance with sections 327, 328, 329, 330, 331, 363, 503(b)(4) and 1103 of the Bankruptcy Code, as applicable (collectively, "Professional Fees,") incurred or earned at any time before or on the first business day after delivery by either the DIP Notes Trustee or the DIP ABL Agent of a Carve-Out Trigger Notice (as defined below) (the "Termination Date"), and without regard to whether such fees and expenses are provided for in any Approved Budget, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors that (x) will become payable upon consummation of the stalking horse purchase agreement (as in effect on the date hereof) attached to the Bidding Procedures Order (as defined below), so long as such stalking horse purchase agreement has not terminated prior to delivery of the Carve-Out Trigger Notice or (y) are otherwise fully earned pursuant to the terms of the applicable engagement letters or retention applications prior to the delivery of a Carve-Out Trigger Notice); and (iv) Professional Fees incurred after the first business day following delivery by the DIP Notes Trustee or the DIP ABL Agent of the Carve-Out Trigger Notice in an aggregate amount not to exceed $1,000,000 with respect to Professional Persons (the amount set forth in this clause (iv) being the "Post-Carve-Out Trigger Notice Cap"), to the extent

allowed at any time, whether by interim order, procedural order, final order or otherwise; *provided* that to the extent that any amount of the foregoing compensation or reimbursement is denied or reduced by a final order by the Bankruptcy Court or any other court of competent jurisdiction, such amount shall no longer constitute Professional Fees. For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Notes Trustee or the DIP ABL Agent (or, following the indefeasible payment in cash in full of the obligations under the DIP Notes Facility or DIP ABL Obligations, the Prepetition Representatives) to the DIP Obligors, their lead restructuring counsel, the DIP ABL Agent or DIP Notes Trustee, as applicable, each of their respective lead restructuring counsel, the U.S. Trustee, and lead counsel to the Creditors' Committee, which notice may only be delivered by the DIP Notes Trustee following the occurrence and during the continuation of an Event of Default (as defined in the DIP Notes Indenture) (but subject to any applicable grace periods, waivers, or forbearances) or the DIP ABL Agent following the occurrence and during the continuation of a DIP ABL Termination Event (as defined below) (but subject to any applicable grace periods, waivers, or forbearances), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) Starting with the first full calendar week following the Petition Date, not later than the fourth business day of each such week, each Professional Person shall deliver to the Debtors, the DIP Notes Trustee, and the DIP ABL Agent a statement (each such statement, a "Weekly Statement") setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (the

"Cumulative Total Unpaid Fees and Expenses"). Upon the Interim Order Entry Date, the Debtors have, and shall continue to, on a weekly basis and prior to the closing of any sale of all or substantially all of the Debtors' assets, transfer cash proceeds from cash on hand (including Cash Collateral) in an amount equal to the Cumulative Total Unpaid Fees and Expenses (including, in the event of a sale of all or substantially all of the Debtors' assets, any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors that are or will become fully earned upon the closing of such sale pursuant to the terms of the applicable engagement letters or retention applications) included in the most recent Weekly Statement or estimate prior to a sale of all or substantially all of the Debtors' assets timely received by the Debtors less the amount of cash already deposited in the Professional Fees Escrow Account (as defined below) or if a Weekly Statement is not provided, the total budgeted weekly fees of Professional Persons for the prior week set forth in the Approved Budget, into a segregated account not subject to the control of the DIP Notes Trustee, the DIP Noteholders, the DIP ABL Agent, any Prepetition Secured Party or any other secured or unsecured creditor (the "Professional Fees Escrow Account"). Prior to delivery of a Carve-Out Trigger Notice, the Debtors shall use proceeds of the DIP Notes Facility (if available) to fund the Professional Fees Escrow Account prior to using Cash Collateral from ABL Priority Collateral or advances under the DIP ABL Facility to fund the Professional Fees Escrow Account. No later than one (1) business day after the delivery of a Carve-Out Trigger Notice, each Professional Person shall deliver one additional statement to the Debtors, the DIP Notes Trustee, and the DIP ABL Agent setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has already been delivered and concluding on the Termination Date, and the Debtors shall transfer such amounts to the Professional Fees Escrow

Account, first using proceeds of the DIP Notes Facility (if available) prior to using Cash Collateral from ABL Priority Collateral.

(d) The Debtors shall use funds held in the Professional Fees Escrow Account exclusively to pay Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final orders of the Court; *provided* that the Debtors' obligations to pay Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fees Escrow Account. Funds transferred to the Professional Fees Escrow Account shall be held in trust for and exclusively available for the payment of any fees and expenses of the Professional Persons, including with respect to obligations arising out of the Carve-Out; *provided, however*, that when all Professional Fees have been paid in full, any funds remaining in the Professional Fees Escrow Account shall be paid to the Debtors, subject to paragraph 5(g) below.

(e) On the day on which a Carve-Out Trigger Notice is received by the DIP Obligors, the Carve-Out Trigger Notice shall constitute a demand to the DIP Obligors to utilize cash on hand, including Cash Collateral, to transfer to the Professional Fees Escrow Account cash in an amount equal to (i) the difference between the aggregate amount of unpaid Professional Fees and the amount of cash already funded in the Professional Fees Escrow Account as of the date of the Termination Date, and (ii) the Post-Carve-Out Trigger Notice Cap, prior to the payment of any other claims (clauses (i) and (ii), collectively, the "Carve-Out Reserves").

(f) If, following the full funding of the Carve-Out Reserves, (i) the proportion of the amount of the Carve-Out Reserves funded from the proceeds of ABL Priority Collateral relative to the amount of the Carve-Out Reserves funded from the proceeds of the DIP Notes Facility and Notes Priority Collateral exceeds the proportion of the principal amount outstanding

under the DIP ABL Facility relative to the principal amount outstanding under the DIP Notes Facility, Prepetition 1L Notes and Prepetition 2L Notes (such excess amount, the "ABL Overfunding Amount") and (ii) the value of the remaining ABL Priority Collateral is less than the outstanding amount of DIP ABL Obligations (the "ABL Deficiency Amount"), then proceeds of the Notes Priority Collateral shall first be paid to the DIP ABL Secured Parties in an amount equal to the lesser of the ABL Overfunding Amount and the ABL Deficiency Amount prior to any such proceeds being paid to the DIP Notes Secured Parties or the Prepetition Secured Parties; *provided* that this paragraph 5(f) shall only relate to the relative rights of the DIP ABL Secured Parties, DIP Notes Secured Parties, Prepetition 1L Secured Parties and Prepetition 2L Secured Parties as to each other and shall not be deemed to be an obligation of the Debtors or an impairment or limitation on the priority of the Carve-Out and funding obligations herein.

(g) Notwithstanding anything to the contrary in the DIP Notes Documents or the DIP Orders, following delivery of a Carve-Out Trigger Notice, the DIP Notes Trustee, the DIP ABL Agent, and the Prepetition Representatives shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets, but excluding the normal remittance of Cash Collateral into the Collection Account; it being understood that such cash in the Collection Account after a Carve-out Trigger Notice shall be used to fund the Carve Out Reserves of the Debtors (even if applied to the DIP ABL Obligations in the normal course of Cash Dominion; and, in such instance, subject only to written confirmation from the Debtors to the DIP ABL Agent of the amount of such cash to be remitted to the Professional Fees Escrow Account, the DIP ABL Agent will fund the same to the Professional Fees Escrow Account)) until the Carve-Out Reserves have been fully funded to the Professional Fees Escrow Account, but shall have a lien on, and security interest in, any residual interest in the Carve-Out Reserves, with any excess,

after payment in full of all Professional Fees, paid to the DIP Notes Trustee or the DIP ABL Agent, as applicable, for application in accordance with this Final Order. Notwithstanding anything to the contrary in the DIP Orders, (i) the failure of the Professional Fees Escrow Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (ii) in no way shall the Approved Budget, Carve-Out, Post-Carve-Out Trigger Notice Cap, Professional Fees Escrow Account, or any of the foregoing be construed as a cap or limitation on the amount of Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise).

(h) For the avoidance of doubt, if the DIP Notes Obligations or DIP ABL Obligations are indefeasibly paid in cash in full or the DIP Notes Facility or DIP ABL Facility is otherwise terminated, the DIP Orders shall remain in full force and effect, including with respect to the Debtors' use of Cash Collateral, the Carve-Out, the Professional Fees Escrow Account, and all related provisions in respect thereof, and the Prepetition Representatives shall assume any rights and obligations that the DIP Notes Trustee or the DIP ABL Agent, as applicable, previously had with respect to the Carve-Out and the Professional Fees Escrow Account.

(i) Any payment or reimbursement made prior to the occurrence of the Termination Date in respect of any Professional Fees shall not reduce the Carve-Out. Any payment or reimbursement made on or after the occurrence of the Termination Date in respect of any Professional Fees shall permanently reduce the Carve-Out on a dollar-for-dollar basis.

(j) None of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with these chapter 11 cases or any Successor Cases. Nothing in this Final Order or otherwise shall be construed to obligate the

DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(k) For the avoidance of doubt, to the extent that professional fees and expenses of the Professional Persons have been incurred by the Debtors or the Creditors' Committee at any time before or on the first business day after delivery by the DIP Notes Trustee or DIP ABL Agent of a Carve-Out Trigger Notice but have not yet been allowed by the Court, such professional fees and expenses of the Professional Persons shall constitute Professional Fees benefiting from the Carve-Out upon their allowance by the Court, whether by interim or final compensation order and whether before or after delivery of the Carve-Out Trigger Notice, and the Professional Fees Escrow Account shall include such professional fees and expenses.

6. *DIP Superpriority Claims*. Effective upon the Interim Order Entry Date, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Notes Obligations and DIP ABL Obligations constituted, and continue to constitute, allowed superpriority administrative expense claims (the "DIP Superpriority Claims") against the DIP Obligors on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b) and 726 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims were or become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out. The DIP Superpriority Claims are payable from, and have recourse to, all prepetition and

postpetition property of the DIP Obligors and all proceeds thereof (excluding (x) Carve-Out Reserves and the Professional Fees Escrow Account and any amounts held therein other than the Debtors' reversionary interest therein, and (y) claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, the "Avoidance Actions") but including any proceeds or property recovered as a result of any Avoidance Actions, whether by judgment, settlement or otherwise (the "Avoidance Proceeds")), subject only to the Carve-Out. Notwithstanding any other provisions of this Final Order, Avoidance Proceeds, Commercial Tort Claims,[5] and proceeds or property recovered as a result of any Commercial Tort Claims (the "Commercial Tort Proceeds") may only be applied in satisfaction of the DIP ABL Obligations, the DIP Notes Obligations and the Prepetition Secured Obligations after the DIP ABL Secured Parties, DIP Notes Secured Parties, and Prepetition Secured Parties, as applicable, have exhausted all other sources of recovery for repayment of their respective claims. Notwithstanding anything contained herein but subject to the immediately preceding sentence, in the DIP Notes Documents, or in the DIP ABL Agreement to the contrary, the DIP Superpriority Claims granted to (x) the DIP ABL Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, ABL Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP Notes Secured Parties, (y) the DIP Notes Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, Notes Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP ABL Secured Parties, and (z) the DIP ABL Secured Parties and the DIP Notes Secured Parties shall be *pari passu* in right of payment as to

[5] As used herein "Commercial Tort Claims" has the meaning provided in the Uniform Commercial Code as enacted by the State of New York.

the proceeds of any assets not described in the foregoing clause (x) or (y). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order, or any provision thereof is vacated, reversed or modified, on appeal or otherwise.

7. *Intercreditor Agreements*. Pursuant to Section 510 of the Bankruptcy Code, the Prepetition Notes Intercreditor Agreement and the Prepetition ABL Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the other Prepetition Debt Documents (collectively, the "Intercreditor Agreements") shall (i) remain in full force and effect, (ii) continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights and remedies of such parties with respect to replacement liens, administrative expense claims and superpriority administrative expense claims or amounts payable in respect thereof), and (iii) not be deemed to be amended, supplemented, altered or otherwise modified by the terms of the DIP Orders, the DIP Notes Documents, or the DIP ABL Agreement, unless expressly set forth herein or therein. As between the ABL Priority Collateral, on the one hand, and the Notes Priority Collateral, on the other hand, the Prepetition ABL Intercreditor Agreement will govern the rights and obligations between the DIP Notes Secured Parties and the DIP ABL Secured Parties. Without limiting the foregoing, the DIP ABL Obligations constitute "ABL Facility Obligations" under, and as defined in, the Prepetition ABL Intercreditor Agreement and the DIP Notes Obligations constitute "Notes Obligations" under, and as defined in, the Prepetition ABL Intercreditor Agreement. As a result, the DIP ABL Agent's, Prepetition 1L Trustee's, and Prepetition 2L Trustee's respective interests in the Notes Priority Collateral and the ABL Priority Collateral shall, solely with respect to the Prepetition Secured Parties, be the same as that of the Prepetition ABL Agent, Prepetition 1L

Trustee, and Prepetition 2L Trustee prior to the Roll Up and the commencement of these Chapter 11 Cases and be governed by the Intercreditor Agreements unless otherwise expressly provided by the DIP Orders. The Intercreditor Agreements are, in each case, binding and enforceable against the Prepetition Secured Parties in accordance with their terms.

8. *DIP Notes Liens*. As security for the DIP Notes Obligations, effective and automatically properly perfected on the Interim Order Entry Date, and without the necessity of execution, recordation or filing of any perfection document or instrument, or the possession or control by the DIP Notes Trustee of, or over, any Collateral, without any further action by the DIP Notes Secured Parties, the following valid, binding, continuing, fully perfected, enforceable and non-avoidable security interests and liens (the "DIP Notes Liens") were, and hereby are, granted to the DIP Notes Trustee for the benefit of the DIP Notes Secured Parties (all property identified in clauses (a) through (e) below, together with all other real and personal property of the Debtors of any kind, nature, or description whatsoever, wherever located, and whenever acquired or arising, and together with all additions and accessions to, substitutions for, and replacements, proceeds, rents, issues, profits, and products of the foregoing, being collectively referred to as the "DIP Collateral"), subject and subordinate to the Carve-Out and in accordance with the priorities set forth on **Exhibit 3**:

(a) *Liens on Unencumbered Property*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a first priority lien on and security interest in (subject only to the Carve-Out and in accordance with the priorities set forth on **Exhibit 3**) all tangible and intangible prepetition and postpetition property of the DIP Obligors of any kind or nature whatsoever, whether existing on the Petition Date or thereafter acquired or arising and wherever located, and the proceeds, products, rents, and profits thereof, whether arising from section 552(b) of the Bankruptcy Code (subject to

paragraph 13 of this Final Order) from time to time, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, other than the Avoidance Actions, the Carve-Out Reserves, the JV Interests[6], the DIP Notes Account (any amounts held therein) and the Professional Fee Escrow Account (and any amounts held therein), but including, upon entry of this Final Order, the Avoidance Proceeds (collectively, the "Unencumbered Property").

(b) *Liens Priming Certain Prepetition Secured Parties' Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting Notes Priority Collateral, regardless of where located. Notwithstanding anything herein to the contrary, the DIP Notes Liens shall be (A) senior in all respects to the DIP ABL Liens on the Notes Priority Collateral, (B) senior in all respects to the Prepetition Liens on the Notes Priority Collateral, (C) senior to any Adequate Protection Liens on the Notes Priority Collateral and (D) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as

[6] "JV Interest" shall mean the equity interest in Convergram de Mexico S. de R.L. DE C.V., a Mexican corporation ("Convergram") owned by Anagram International, Inc. to the extent (a) such equity interest cannot be pledged without a breach of the Management and Ownership Agreement, dated as of November 30, 2007 (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time), by and among Convertidora Industrial S.A.B. DE C.V., a Mexican limited liability company ("Convertidora"), Convergram, Anagram International, Inc., and the other parties party thereto, (b) the pledge of such Capital Stock requires obtaining prior written consent of Convertidora under any applicable laws, or (c) the pledge of such Capital Stock would result in a change of control, repurchase obligation, create a right of termination in favor of any other party to the Management and Ownership Agreement (other than the Debtors) (after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law or principles of equity). For avoidance of doubt, no action to perfect any security interest in the JV Interest shall be required other than the entry of the DIP Orders and the filing of the UCC financing statement.

such priorities are set forth in **Exhibit 3**. The Prepetition Liens with respect to the Notes Priority Collateral shall be primed by and made subject and subordinate to the DIP Notes Liens.

(c) *Junior Liens Priming Certain Prepetition Secured Parties' Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior (subject only to (1) the Carve-Out, (2) the DIP ABL Liens, (3) the ABL Adequate Protection Liens and (4) the Prepetition ABL Liens on the ABL Priority Collateral) priority priming security interest in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting ABL Priority Collateral, regardless of where located, which security interest and lien shall prime the Prepetition 1L Notes Liens and Prepetition 2L Notes Liens on the ABL Priority Collateral. Notwithstanding anything herein to the contrary, the DIP Notes Liens shall be (A) junior, subject and subordinate in all respects to the DIP ABL Liens, the Prepetition ABL Liens and the ABL Adequate Protection Liens on the ABL Priority Collateral, (B) senior in all respects to the Prepetition Liens on the ABL Priority Collateral other than the Prepetition ABL Liens and ABL Adequate Protection Liens, and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as such priorities are set forth in **Exhibit 3**. The Prepetition 1L Notes Liens and Prepetition 2L Notes Liens with respect to the ABL Priority Collateral shall be primed by and made subject and subordinate to the DIP Notes Liens.

(d) *Liens Junior to Certain Other Liens*. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest and lien upon all tangible and intangible prepetition and postpetition property of the DIP Obligors that, on or as of the Petition Date, is subject to Prepetition Permitted Senior Liens, which shall be (x)

with respect to the Notes Priority Collateral, immediately junior and subordinate to the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, and (y) with respect to the ABL Priority Collateral, junior and subordinate to the Prepetition ABL Permitted Senior Liens, but (1) senior to the Prepetition Liens and Adequate Protections Liens on all Notes Priority Collateral subject to such Prepetition Permitted Senior Liens and (2) junior, subject and subordinate to the DIP ABL Liens, the ABL Adequate Protection Liens, and the Prepetition ABL Liens, but senior to the Prepetition 1L Notes Liens and the Prepetition 2L Notes Liens on all ABL Priority Collateral, subject to such Prepetition Permitted Senior Liens.

(e) *No Senior Liens.* Other than the Carve-Out, the DIP Notes Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Notes Documents, the Intercreditor Agreements or in the DIP Orders, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Obligors, or (C) any intercompany liens; or (ii) unless otherwise provided for in the DIP Orders, subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

9. *DIP ABL Liens*. As security for the DIP ABL Obligations, effective and automatically properly perfected as of the Interim Order Entry Date and on the date this Final Order is entered, and without the necessity of execution, recordation or filing of any perfection document or instrument, or the possession or control by the DIP ABL Agent of, or over, any Collateral, without any further action by the DIP ABL Secured Parties, the following valid,

binding, continuing, fully perfected, enforceable and non-avoidable security interests and liens (the "DIP ABL Liens") were, on the Interim Order Entry Date, and are hereby granted to the DIP ABL Agent for the benefit of the DIP ABL Secured Parties, subject and subordinate to the Carve-Out and in accordance with the priorities set forth on **Exhibit 3**:

(a) *Liens on Unencumbered Property*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a lien on and security interest in (subject only to the Carve-Out and the DIP Notes Liens and in accordance with the priorities set forth on **Exhibit 3**) all Unencumbered Property. Notwithstanding anything herein to the contrary, the DIP ABL Liens shall be (A) junior in all respects to the Carve-Out and the DIP Notes Liens and (B) senior in all respects to the Adequate Protection Liens, in each case, on Unencumbered Property.

(b) *Liens Priming Certain Prepetition Secured Parties' Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest (subject only to the Carve-Out) in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting ABL Priority Collateral, regardless of where located. Notwithstanding anything herein to the contrary, the DIP ABL Liens shall be (A) senior in all respects to the Adequate Protection Liens, the Prepetition ABL Liens, the DIP Notes Liens, the Prepetition 1L Notes Liens, and the Prepetition 2L Notes Liens on the ABL Priority Collateral, and (B) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as such priorities are set forth in **Exhibit 3**. The Prepetition Liens with respect to the ABL Priority Collateral shall be primed by and made subject and subordinate to the DIP ABL Liens.

(c) *Junior Liens Priming Certain Prepetition Secured Parties' Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior (with respect to the Notes Priority Collateral, subject only to (1) Carve-Out, (2) the DIP Notes Liens, (3) the 1L Adequate Protection Liens, (4) the Prepetition 1L Notes Liens, (5) the 2L Adequate Protection Liens, and (6) the Prepetition 2L Notes Liens) priority priming security interest in, and lien upon, all tangible and intangible prepetition and postpetition property of the DIP Obligors constituting Notes Priority Collateral, regardless of where located, which security interest and lien shall prime the Prepetition ABL Liens on the Notes Priority Collateral. Notwithstanding anything herein to the contrary, the DIP ABL Liens shall be (A) with respect to the Notes Priority Collateral, junior, subject and subordinate in all respects to the Carve-Out, the DIP Notes Liens, the 1L Adequate Protection Liens, the Prepetition 1L Notes Liens, the 2L Adequate Protection Liens, and the Prepetition 2L Notes Liens, (B) with respect to the Notes Priority Collateral, senior and prior in all respects to the ABL Adequate Protection Liens and the Prepetition ABL Liens and (C) not subordinate to any lien, security interest or mortgage that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, in each case as such priorities are set forth in **Exhibit 3**. The Prepetition ABL Liens with respect to the Notes Priority Collateral shall be primed by and made subject and subordinate to the DIP ABL Liens.

(d) Other than the Carve-Out, the DIP ABL Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP ABL Agreement, the Intercreditor Agreements, or in the DIP Orders, any liens or security interests arising after the Petition Date, including, without

limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, or (C) any intercompany liens; or (ii) unless otherwise provided for in the DIP Orders, subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

10. *Protection of DIP Noteholders', DIP ABL Secured Parties' and Prepetition Secured Parties' Rights.*

(a) So long as there are any DIP Notes Obligations and/or DIP ABL Obligations outstanding, or the DIP Noteholders or DIP ABL Secured Parties have any outstanding commitments under the DIP Notes Facility or the DIP ABL Facility, respectively, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Debt Documents or the DIP Orders, or otherwise seek to exercise or enforce any rights or remedies against the Notes Priority Collateral or ABL Priority Collateral, including in connection with the Adequate Protection Liens; (ii) not oppose or object to any transfer, disposition or sale of, or release of liens on, any Notes Priority Collateral to the extent such transfer, disposition, sale or release is authorized under the DIP Notes Documents; (iii) not oppose or object to any transfer, disposition or sale of, or release of liens on, any ABL Priority Collateral to the extent such transfer, disposition, sale or release is authorized under the DIP ABL Agreement; (iv) not file any financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral other than (x) to perfect, or evidence the perfection of, the liens granted pursuant to the DIP Orders or (y) as may be required by applicable state or foreign law to complete a previously commenced process of perfection or to

continue the perfection of valid and non-avoidable liens or security interests existing as of the Petition Date; and (v) deliver or cause to be delivered, at the cost and expense of the DIP Obligors or the DIP ABL Secured Parties, as applicable, any termination statements, releases and/or assignments in favor of the DIP Notes Secured Parties or the DIP ABL Secured Parties, as applicable, or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the DIP Collateral subject to any sale or disposition permitted by the DIP Notes Documents or the DIP ABL Agreement, as applicable, or the DIP Orders or any other order of the Court.

(b) Except as set forth in clause (c) immediately below, to the extent any Prepetition Secured Party has possession of, or control over, any Prepetition Collateral or DIP Collateral, or has been listed as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, such Prepetition Secured Party shall be deemed to have such possession or be so listed or have such possession or control as a gratuitous bailee and/or gratuitous agent for the benefit of the DIP Notes Secured Parties or the DIP ABL Secured Parties, as applicable, and such Prepetition Secured Party shall comply with the instructions of the DIP Notes Trustee, acting at the direction of the requisite DIP Noteholders under the DIP Notes Documents, or the DIP ABL Agent, acting at the direction of the Required Lenders (as defined in the DIP ABL Agreement), as applicable, with respect to any of the foregoing.

(c) So long as there are any (i) DIP ABL Obligations outstanding and until all DIP ABL Obligations have been paid in full, in cash (and all letters of credit issued or other asserted contingent obligations under the DIP ABL Facility have been cash collateralized in accordance with the terms of the DIP ABL Agreement), or (ii) any Prepetition ABL Obligations (including the ABL 507(b) Claims) outstanding and until all Prepetition ABL Obligations

(including the ABL 507(b) Claims) have been paid in full, in cash (and all letters of credit issued or other asserted contingent obligations under the Prepetition ABL Credit Agreement have been cash collateralized in accordance with the terms of the Prepetition ABL Loan Documents), solely with respect to the ABL Priority Collateral, the enforcement rights of the DIP Notes Secured Parties and the Prepetition Secured Parties (other than the Prepetition ABL Secured Parties) with respect to the ABL Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement as if the DIP Notes Trustee was party thereto as a First Lien Notes Security Trustee or Second Lien Notes Security Trustee, as applicable (each as defined in the Prepetition ABL Intercreditor Agreement).

(d) So long as there are any (i) DIP Notes Obligations outstanding and until all DIP Notes Obligations have been paid in full, in cash, or (ii) any Prepetition Notes Obligations (including the 1L 507(b) Claims and 2L 507(b) Claims) outstanding and until all Prepetition Notes Obligations (including the 1L 507(b) Claims and 2L 507(b) Claims) have been paid in full, in cash, solely with respect to the Notes Priority Collateral, the enforcement rights of the DIP ABL Secured Parties and the Prepetition Secured Parties (other than the Prepetition 1L Secured Parties and Prepetition 2L Secured Parties) with respect to the Notes Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement as if the DIP ABL Agent was party thereto as an ABL Facility Administrative Agent (as defined in the Prepetition ABL Intercreditor Agreement).

(e) Except as set forth in clause (c) immediately above with respect to the ABL Priority Collateral, and subject to the terms of such clause (c), any proceeds of Prepetition Collateral received by any Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise, shall be

(i) with respect to Collateral other than ABL Priority Collateral, segregated and held in trust for the benefit of, and forthwith paid over to, the DIP Notes Trustee for the benefit of the DIP Notes Secured Parties in the same form as received, and (ii) with respect to ABL Priority Collateral, segregated and held in trust for the benefit of, and forthwith paid over to, the DIP ABL Agent for the benefit of the DIP ABL Secured Parties in the same form as received, in each case with respect to clauses (i) and (ii), with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The DIP Notes Trustee and the DIP ABL Agent, as applicable, are each hereby authorized to make any such endorsements as agent for the applicable Prepetition Secured Parties. This authorization is coupled with an interest and is irrevocable.

(f) The DIP Obligors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as otherwise permitted by the DIP Notes Documents, the DIP ABL Agreement, the DIP Orders or any other order of the Court.

11. *Termination and Remedies*.

(a) Upon the occurrence and during the continuation of an Event of Default that has not been waived by the requisite DIP Noteholders under the DIP Notes Documents and following delivery of written notice at the direction of the requisite DIP Noteholders under the DIP Notes Documents (a "DIP Notes Termination Notice") (including by e-mail) on not less than five (5) business days' notice (such five (5) business day period, the "DIP Notes Trustee Remedies Notice Period") to lead restructuring counsel to the Debtors, lead restructuring counsel to each of the Prepetition Representatives, lead counsel to the DIP ABL Agent, lead counsel to the Creditors' Committee, and the U.S. Trustee (the "DIP Notes Remedies Notice Parties"), the DIP Notes Trustee may (and any automatic stay otherwise applicable to the DIP Notes Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the

terms of the DIP Orders (including this paragraph) was, by the Interim Order, and is hereby modified), without further notice to, hearing of, or order from the Court, to the extent necessary to permit the DIP Notes Trustee to, unless the Court orders otherwise (*provided* that during the DIP Notes Trustee Remedies Notice Period, the Debtors, the Creditors' Committee, and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP Notes Trustee and the requisite DIP Noteholders under the DIP Notes Documents consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, an Event of Default has occurred and is continuing, or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP Notes Trustee Remedies Notice Period, then the DIP Notes Trustee Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (i) immediately terminate and/or revoke the Debtors' right under the DIP Orders and any other DIP Notes Documents to use any Cash Collateral (subject to the Carve-Out and related provisions); (ii) terminate the DIP Notes Facility and any DIP Notes Document as to any future liability or obligation of the DIP Notes Secured Parties but without affecting any of the DIP Notes Obligations or the DIP Notes Liens securing such DIP Notes Obligations; (iii) declare all DIP Notes Obligations to be immediately due and payable; and (iv) invoke the right to charge interest at the default rate under the DIP Notes Documents. Upon delivery of such DIP Notes Termination Notice by the DIP Notes Trustee at the direction of the requisite DIP Noteholders under the DIP Notes Documents, without further notice or order of the Court, the DIP Notes Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur additional DIP Notes Obligations hereunder will, subject to the expiration of the DIP Notes Trustee Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP Notes Secured Parties will have no obligation to provide any

DIP Notes or other financial accommodations; *provided, however,* that during the DIP Notes Trustee Remedies Notice Period, the Debtors shall have the right to use Cash Collateral to fund the Carve-Out, meet payroll obligations, and to pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates set forth in the Approved Budget in accordance with the DIP Notes Documents. As soon as reasonably practicable following receipt of a DIP Notes Termination Notice, the Debtors shall file a copy of same on the docket.

(b) Following an Event of Default and the delivery of the DIP Notes Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in paragraph 11(a)), the DIP Notes Secured Parties shall be required to file a motion with the Court seeking emergency relief (the "Stay Relief Motion") on not less than five (5) business days' notice to the DIP Notes Remedies Notice Parties (which may run concurrently with the DIP Notes Trustee Remedies Notice Period) for a further order of the Court modifying the automatic stay in these chapter 11 cases to permit the DIP Notes Secured Parties to, subject to the Intercreditor Agreements and the Carve-Out and related provisions: (i) freeze monies or balances in the Debtors' accounts (unless such monies constitute ABL Priority Collateral or are used to fund the Carve-Out Reserves); (ii) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP Notes Trustee or the DIP Notes Secured Parties against the DIP Notes Obligations (unless such amounts constitute ABL Priority Collateral); (iii) enforce any and all rights against the DIP Collateral (other than ABL Priority Collateral), including, without limitation, foreclosure on all or any portion of the DIP Collateral (other than ABL Priority Collateral), occupying the Debtors' premises, sale or disposition of the DIP Collateral (other than ABL Priority Collateral); and (iv) take any other actions or exercise any other rights or remedies permitted under the DIP Orders, the DIP Notes Documents or applicable

law (other than with respect to ABL Priority Collateral). If the DIP Notes Secured Parties are permitted by the Court to take any enforcement action with respect to the DIP Collateral (other than ABL Priority Collateral) following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP Notes Secured Parties in their efforts to enforce their security interest in the DIP Collateral (other than ABL Priority Collateral), and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP Notes Secured Parties from enforcing their security interests in the DIP Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, and subject to the other terms of this Final Order, and subject further to any remedy, terms and conditions that the Court may impose, the Debtors may use Cash Collateral and the proceeds of the DIP Notes Facility to the extent drawn prior to the occurrence of Event of Default to fund the Carve-Out, meet payroll obligations, and pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Approved Budget and the terms of the DIP Notes Documents and the DIP ABL Agreement.

(c) As part of the DIP ABL Agreement set forth in the DIP Orders, the occurrence and continuance of any of the termination events set forth in **Exhibit 4** attached hereto shall each constitute a "DIP ABL Termination Event," unless otherwise expressly waived in writing by the DIP ABL Agent.

(d) Upon the occurrence and during the continuation of a DIP ABL Termination Event that has not been waived in writing by the DIP ABL Agent and following delivery of written notice (an "DIP ABL Termination Notice") (including by e-mail) on not less than five (5) business days' notice (such five (5) business day period, the "DIP ABL Agent Remedies Notice Period") to lead restructuring counsel to the Debtors, lead restructuring counsel to each of the Prepetition

Representatives, lead counsel to the DIP Notes Trustee, lead counsel to the Creditors' Committee, and the U.S. Trustee (the "DIP ABL Remedies Notice Parties"), the DIP ABL Agent may (and any automatic stay otherwise applicable to the DIP ABL Secured Parties, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, but subject to the terms of the DIP Orders (including this paragraph) was, by the Interim Order, and is hereby modified), without further notice to, hearing of, or order from the Court, to the extent necessary to permit the DIP ABL Agent to, unless the Court orders otherwise (*provided* that during the DIP ABL Agent Remedies Notice Period, the Debtors, the Creditors' Committee, and/or any party in interest shall be entitled to seek an emergency hearing (with the DIP ABL Agent consenting to such emergency hearing) with the Court for the purpose of contesting whether, in fact, a DIP ABL Termination Event has occurred and is continuing, or to obtain non-consensual use of Cash Collateral, and provided further that if a request for such hearing is made prior to the end of the DIP ABL Agent Remedies Notice Period, then the DIP ABL Agent Remedies Notice Period shall be continued until the Court hears and rules with respect thereto): (i) immediately terminate and/or revoke the Debtors' right under the DIP Orders and the DIP ABL Agreement to use any Cash Collateral (subject to the Carve-Out and related provisions); (ii) terminate the DIP ABL Facility and the DIP ABL Agreement as to any future liability or obligation of the DIP ABL Secured Parties but without affecting any of the DIP ABL Obligations or the DIP ABL Liens securing such DIP ABL Obligations; (iii) implement the default rate of interest (an additional 2% per annum) on the DIP ABL Obligations under the DIP ABL Facility and (iv) declare all DIP ABL Obligations to be immediately due and payable. Upon delivery of such DIP ABL Termination Notice by the DIP ABL Agent, without further notice or order of the Court, the DIP ABL Secured Parties' and the Prepetition Secured Parties' consent to use Cash Collateral and the Debtors' ability to incur

additional DIP ABL Obligations hereunder will, subject to the expiration of the DIP ABL Agent Remedies Notice Period and unless the Court orders otherwise, automatically terminate and the DIP ABL Secured Parties will have no obligation to provide any loans or other financial accommodations under the DIP ABL Agreement; *provided, however,* that during the DIP ABL Agent Remedies Notice Period, the Debtors shall have the right to use Cash Collateral to fund the Carve-Out, meet payroll obligations, and to pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates set forth in the Approved Budget in accordance with the DIP ABL Agreement and the other Prepetition ABL Loan Documents. As soon as reasonably practicable following receipt of a DIP ABL Termination Notice, the Debtors shall file a copy of same on the docket.

(e) Following a DIP ABL Termination Event and the delivery of the DIP ABL Termination Notice, but prior to exercising the remedies set forth in this sentence below or any other remedies (other than those set forth in paragraph 11(d)), the DIP ABL Secured Parties shall be required to file a Stay Relief Motion with the Court seeking emergency relief on not less than five (5) business days' notice to the DIP ABL Remedies Notice Parties (which may run concurrently with the DIP ABL Agent Remedies Notice Period) for a further order of the Court modifying the automatic stay in these chapter 11 cases to permit the DIP ABL Secured Parties to, subject to the Intercreditor Agreements and the Carve-Out and related provisions: (i) freeze monies or balances in the Debtors' accounts (unless such monies constitute Notes Priority Collateral or are used to fund the Carve-Out Reserves); (ii) immediately set-off any and all amounts in accounts maintained by the Debtors with the DIP ABL Agent or the DIP ABL Secured Parties against the DIP ABL Obligations (other than any proceeds of the DIP Notes Indenture or amounts constituting Notes Priority Collateral); (iii) enforce any and all rights against the ABL Priority Collateral,

including, without limitation, foreclosure on all or any portion of the ABL Priority Collateral, occupying the Debtors' premises, sale or disposition of the ABL Priority Collateral; and (iv) take any other actions or exercise any other rights or remedies permitted under the DIP Orders, the DIP ABL Agreement, the Prepetition ABL Loan Documents or applicable law (other than with respect to Notes Priority Collateral). If the DIP ABL Secured Parties are permitted by the Court to take any enforcement action with respect to the ABL Priority Collateral following the hearing on the Stay Relief Motion, the Debtors shall cooperate with the DIP ABL Secured Parties in their efforts to enforce their security interest in the ABL Priority Collateral, and shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such DIP ABL Secured Parties from enforcing their security interests in the ABL Priority Collateral. Until such time that the Stay Relief Motion has been adjudicated by the Court, and subject to the other terms of this Final Order, and subject further to any remedy, terms or conditions that the Court may impose, the Debtors may use Cash Collateral and the proceeds of the DIP ABL Facility to the extent drawn prior to the occurrence of a DIP ABL Termination Event to fund the Carve-Out, meet payroll obligations, and pay necessary expenses to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Approved Budget and the terms of the DIP Notes Documents and the DIP ABL Agreement. For the avoidance of doubt, continuation of the daily application to the DIP ABL Obligations of amounts received in the Collection Account pursuant to the DIP ABL Agreement and the Roll-Up pursuant to the terms of the DIP Orders will not be deemed to be an enforcement action by the DIP ABL Secured Parties.

(f) No rights, protections or remedies of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties granted by the DIP Orders, the DIP Notes Documents, or the DIP ABL Agreement shall be limited, modified or impaired in any way

by: (i) any actual or purported withdrawal of the consent to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

12. *Limitation on Charging Expenses Against Collateral*. Except to the extent of the Carve-Out, no costs or expenses of administration of these chapter 11 cases or any Successor Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceeding under the Bankruptcy Code, shall be charged against or recovered from any DIP Notes Secured Party, any DIP ABL Secured Party, any Prepetition Secured Party, any DIP Collateral, or any Prepetition Collateral (including Cash Collateral) pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Notes Trustee, the DIP ABL Agent, and/or each Prepetition Representative, as applicable, and no consent shall be implied from any action, inaction or acquiescence by any of the DIP Notes Secured Parties, DIP ABL Secured Parties, or Prepetition Secured Parties, and nothing contained in the Interim Order or this Final Order shall be deemed to be a consent by any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.

13. The Prepetition Secured Parties shall each be entitled to all the rights and benefits of section 552(b) of the Bankruptcy Code, subject to section 552(b) of the Bankruptcy Code, and in no event shall the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, as applicable, be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Notes Obligations, the DIP ABL Obligations, the Adequate Protection Obligations, the Prepetition Secured Obligations, or the Prepetition

Collateral, as applicable. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Secured Parties, the Prepetition Secured Obligations, or the Prepetition Collateral.

14. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties pursuant to the provisions of the DIP Orders, the DIP Notes Documents, the DIP ABL Agreement, the Prepetition Debt Documents, or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

15. *Use of Cash Collateral*. The Debtors were, upon the Interim Order Entry Date, and are hereby on a final basis authorized, solely on the terms and conditions of the DIP Orders, to use all Cash Collateral in accordance with the DIP Orders, the DIP Notes Documents, the DIP ABL Agreement, and the Approved Budget (subject to any permitted variances) to the extent required under the DIP Notes Documents and the DIP ABL Agreement.

16. *Adequate Protection of Prepetition Secured Parties*. Pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, as adequate protection of their respective interests in the Prepetition Collateral (including Cash Collateral) to the extent of any Diminution in Value and as an inducement to the Prepetition Secured Parties to consent to the priming of the Prepetition Liens and the use of their Cash Collateral, the Prepetition Secured Parties were, upon the Interim Order Entry Date, and hereby are granted the following Adequate Protection (collectively, the "Adequate Protection Obligations"); *provided* that the Adequate Protection Obligations granted to the Prepetition ABL Agent, the Prepetition ABL Lender, and the other

Prepetition ABL Secured Parties by this Final Order shall be effective in accordance with the terms herein if and to the extent that any portion of the Prepetition ABL Obligations are not rolled up, refinanced, and converted to DIP ABL Obligations under the DIP ABL Facility as a result of a successful Challenge timely brought in accordance with the terms of this Final Order:

(a) *Prepetition ABL Adequate Protection Liens*. The Prepetition ABL Agent was, upon the Interim Order Entry Date, and hereby is granted for the benefit of itself and the other Prepetition ABL Secured Parties, effective and perfected upon the date of the Interim Order Entry Date and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements, a valid, perfected replacement security interest and lien to the extent of any of the Prepetition ABL Secured Parties' Diminution in Value upon all of the DIP Collateral (collectively, the "ABL Adequate Protection Liens") (i) in the case of the ABL Priority Collateral, senior to all other liens, but junior, subject, and subordinate solely to the Carve-Out, the DIP ABL Liens, and the Prepetition ABL Permitted Senior Liens, (ii) in the case of the Notes Priority Collateral, junior, subject, and subordinate to (A) the Carve-Out, (B) the DIP Notes Liens, (C) the 1L Adequate Protection Liens, (D) the Prepetition 1L Notes Liens, (E) the 2L Adequate Protection Liens, (F) the Prepetition 2L Notes Liens, (G) the Prepetition 1L Permitted Senior Liens and Prepetition 2L Permitted Senior Liens, and (H) the DIP ABL Liens, and (iii) in the case of the Unencumbered Property, junior, subject, and subordinate to the Carve-Out, the DIP Notes Liens, and the DIP ABL Liens, but *pari passu* in all respects with the 1L Adequate Protection Liens, and senior and prior in all respects to the 2L Adequate Protection Liens, in each case as such priorities are set forth in **Exhibit 3**.

(b) *Prepetition ABL Secured Parties' Section 507(b) Claim*. The Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Secured Parties, was, upon the

Interim Order Entry Date, and hereby is granted an allowed superpriority administrative expense claim against the DIP Obligors on a joint and several basis (without the need to file any proof of claim) to the extent of any of the Prepetition ABL Secured Parties' Diminution in Value under section 507(b) of the Bankruptcy Code (the "ABL 507(b) Claim"), which ABL 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding (x) Avoidance Actions (but including, without limitation, the Avoidance Proceeds), and (y) the DIP Notes Account and amounts on deposit therein). Notwithstanding any other provisions of this Order, Avoidance Proceeds, Commercial Tort Claims and Commercial Tort Proceeds may only be applied in satisfaction of the Adequate Protection 507(b) Claims after the applicable Prepetition Secured Parties have exhausted all other sources of recovery for repayment of their respective claims. With respect to the ABL Priority Collateral, the ABL 507(b) Claim shall be senior to all other claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the Carve-Out, and the ABL 507(b) Claim shall be subject and subordinate only to (i) the Carve-Out and (ii) the DIP Superpriority Claims. The ABL 507(b) Claim and the 1L 507(b) Claim shall be *pari passu* in right of payment.

(c) *Prepetition ABL Secured Parties Fees and Expenses.* As further adequate protection, the DIP Obligors shall currently pay to the Prepetition ABL Agent, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of Goldberg Kohn Ltd., and one local legal counsel to the Prepetition ABL Secured Parties to the

extent permitted under the Prepetition ABL Loan Documents (the "ABL Adequate Protection Fees and Expenses"), subject to the review procedures set forth in paragraph 20 of this Final Order.

(d) *Prepetition ABL Post-Petition Interest*. As additional adequate protection, the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Secured Parties, was, upon the Interim Order Entry Date, and hereby is entitled to current payment of post-petition interest at the non-default rate applicable under the Prepetition ABL Loan Documents on the Petition Date to the Prepetition ABL Obligations.

(e) *Prepetition 1L Adequate Protection Liens*. The Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, was, upon the Interim Order Entry Date, and hereby is granted, effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, control agreements, pledge agreements, financing statements or other agreements, or possession or control, to the extent of any of the Prepetition 1L Secured Parties' Diminution in Value, a valid, perfected replacement security interest and lien upon all of the DIP Collateral (the "1L Adequate Protection Liens"), which 1L Adequate Protection Liens shall be (x) in the case of the Notes Priority Collateral, senior to all other liens, but junior, subject, and subordinate to the Carve-Out, the Prepetition 1L Permitted Senior Liens, the Prepetition 2L Permitted Senior Liens, and the DIP Notes Liens, (y) with respect to the ABL Priority Collateral, junior, subject, and subordinate to the Carve-Out, the DIP ABL Liens, the DIP Notes Liens, the ABL Adequate Protection Liens, the Prepetition ABL Liens, and the Prepetition ABL Permitted Senior Liens, and (z) with respect to the Unencumbered Property, (i) *pari passu* in all respects with the ABL Adequate Protection Liens, (ii) junior, subject, and subordinate to the Carve-Out, the DIP Notes Liens, and the DIP ABL Liens, and (iii) senior and

prior to the 2L Adequate Protection Liens, in each case as such priorities are set forth in **Exhibit 3**.

(f) *Prepetition 1L Secured Parties' 507(b) Claim*. The Prepetition 1L Trustee, for the benefit of the Prepetition 1L Secured Parties, was, upon the Interim Order Entry Date, and hereby is granted, to the extent of any of the Prepetition 1L Secured Parties' Diminution in Value, an allowed superpriority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (the "1L 507(b) Claim"), which 1L 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions, but including, without limitation, the Avoidance Proceeds). The 1L 507(b) Claim shall be senior to all other claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the following, in respect of which the 1L 507(b) Claims shall be junior, subject and subordinated: (i) the Carve-Out and (ii) the DIP Superpriority Claims.

(g) *Prepetition 1L Secured Parties Fees and Expenses*. As further adequate protection, the DIP Obligors shall currently pay, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the Prepetition 1L Trustee, the legal advisors to the Prepetition 1L Trustee, and Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel to the Ad Hoc Group (the "1L Adequate Protection Fees and Expenses"), subject to the review procedures set forth in paragraph 20 of this Final Order.

(h) *Prepetition 1L Post-Petition Interest*. As additional adequate protection, the Prepetition 1L Trustee, on behalf of itself and the Prepetition 1L Secured Parties, was, upon the Interim Order Entry Date, and hereby is entitled to post-petition interest which shall accrue, but not be required to be paid, at the non-default contract rate applicable under the Prepetition 1L Notes Documents on the Petition Date to the Prepetition 1L Obligations (the "1L Adequate Protection Payments"). Upon receipt of any 1L Adequate Protection Payments set forth in this subparagraph, the Prepetition 1L Trustee is authorized and directed, without further order of the Court, to distribute such payments to the Prepetition 1L Secured Parties and, notwithstanding anything to the contrary in the Prepetition 1L Notes Indenture, the record date to establish the holders of the Prepetition 1L Notes receiving such payments shall be, with respect to each payment date, a date to be determined by the Prepetition 1L Trustee in advance of distributing such payments.

(i) *Prepetition 2L Adequate Protection Liens*. The Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, was, upon the Interim Order Entry Date, and hereby is granted, effective and perfected upon the Interim Order Entry Date and without the necessity of the execution of any mortgages, security agreements, control agreements, pledge agreements, financing statements or other agreements, or possession or control, to the extent of any of the Prepetition 1L Secured Parties Diminution in Value, a valid, perfected replacement security interest and lien upon all of the DIP Collateral (the "2L Adequate Protection Liens", together with the ABL Adequate Protection Liens and the 1L Adequate Protection Liens, the "Adequate Protection Liens"), which 2L Adequate Protection Liens shall be (x) in the case of the Notes Priority Collateral, senior to all other liens, but junior, subject and subordinate to the Carve-Out, the Prepetition 1L Permitted Senior Liens, the Prepetition 2L Permitted Senior Liens, the 1L

Adequate Protection Liens and the DIP Notes Liens, (y) with respect to the ABL Priority Collateral, junior, subject and subordinate to the Carve-Out, the DIP ABL Liens, the DIP Notes Liens, the ABL Adequate Protection Liens, the Prepetition ABL Liens, the 1L Adequate Protection Liens, the Prepetition 1L Notes Liens, and the Prepetition ABL Permitted Senior Liens, and (z) with respect to the Unencumbered Property, junior, subject and subordinate the Carve-Out, the DIP Notes Liens, the DIP ABL Liens, the ABL Adequate Protection Liens, and the 1L Adequate Protection Liens, in each case as such priorities are set forth in **Exhibit 3**.

(j) *Prepetition 2L Secured Parties' 507(b) Claim*. The Prepetition 2L Trustee, for the benefit of the Prepetition 2L Secured Parties, was, upon the Interim Order Entry Date, and hereby is granted, subject to the Prepetition Debt Documents and any turnover provisions contained therein, to the extent of any of the Prepetition 2L Secured Parties' Diminution in Value, an allowed superpriority administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (the "2L 507(b) Claim", and together with the ABL 507(b) Claim and the 1L 507(b) Claim, the "Adequate Protection 507(b) Claims"), which 2L 507(b) Claim shall be payable from and have recourse to all DIP Collateral and all proceeds thereof (excluding Avoidance Actions but including, without limitation, the Avoidance Proceeds). The 2L 507(b) Claim shall be senior to all other claims against the DIP Obligors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code, whether or not such claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, except for the following, in respect of which the 2L 507(b) Claims shall be junior, subject and subordinated:

(i) the Carve-Out, (ii) the DIP Superpriority Claims, (iii) the ABL 507(b) Claim and (iv) the 1L 507(b) Claim.

(k) *Prepetition 2L Secured Parties Fees and Expenses*. As further adequate protection, the DIP Obligors shall currently pay, in cash, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of the Prepetition 2L Trustee, the legal advisors to the Prepetition 2L Trustee, and Milbank LLP, Houlihan Lokey Capital, Inc., and one local legal counsel to the Ad Hoc Group (the "2L Adequate Protection Fees and Expenses"), subject to the review procedures set forth in paragraph 20 of this Final Order. Any payments made pursuant to this paragraph shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise to the extent any claims arising from the Prepetition 2L Obligations are determined to be undersecured in a final non-appealable order.

17. *Maintenance of Collateral*. The DIP Obligors shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Debt Documents, the DIP Notes Documents, and the DIP ABL Agreement, as applicable.

18. *Perfection of DIP Notes Liens, DIP ABL Liens, and Adequate Protection Liens.*

(a) Without in any way limiting the validity of the automatic perfection of the DIP Notes Liens, the DIP ABL Liens, and the Adequate Protection Liens by the entry of the DIP Orders, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties were, upon the Interim Order Entry Date, and are hereby irrevocably authorized, but not required, to execute in the name of the DIP Obligors, the Debtors, or the Prepetition Obligors (as applicable), as their true and lawful attorneys (with full power of substitution, to the maximum

extent permitted by law) and to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar perfection instruments in any jurisdiction, or take possession of and notate certificated securities or certificates of title, or take any other similar action in a manner not inconsistent herewith to document, validate or perfect the liens and security interests granted to them hereunder and under the Interim Order (the "Perfection Actions"). All such Perfection Actions shall be deemed to have been taken on the Interim Order Entry Date. The automatic stay was, by the Interim Order, and is hereby modified to the extent necessary to permit the DIP Notes Secured Parties, the DIP ABL Secured Parties, and each of the Prepetition Secured Parties to take any Perfection Action. For the avoidance of doubt, the DIP Notes Liens, the DIP ABL Liens, and the Adequate Protection Liens are, and will be deemed to be, valid, perfected, allowed, enforceable, non-avoidable, and not subject to challenge, dispute or subordination, at the time and on the Interim Order Entry Date, whether or not the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties take any such Perfection Actions.

(b) A certified copy of the Interim Order or this Final Order may, in the discretion of the DIP Notes Trustee, the DIP ABL Agent, and each Prepetition Representative (as applicable), be filed or recorded in the filing or recording offices in addition to or in lieu of any financing statements, mortgages, notices of lien or similar instruments, and all filing and recording offices were, as of the Interim order Entry Date, and are hereby authorized and directed to accept a certified copy of this Final Order for filing and/or recording, as applicable.

19. *Preservation of Rights Granted By and Under this Final Order.*

(a) Other than the claims and liens expressly granted or permitted by this Final Order, including the Carve-Out, no claim or lien having a priority superior to or *pari passu* with those granted by the DIP Orders shall be permitted while any of the DIP Notes Obligations, the

DIP ABL Obligations, or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in or permitted under this Final Order, the DIP Notes Liens, the DIP ABL Liens, and the Adequate Protection Liens shall not be: (i) junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code; (ii) subordinated to or made *pari passu* with any other lien or security interest heretofore or hereinafter granted in any of these chapter 11 cases or any Successor Cases, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date; or (iv) junior to any intercompany liens or security interests of the DIP Obligors.

(b) The occurrence and continuance of any Event of Default shall, after written notice by the DIP Notes Trustee (acting at the direction of requisite DIP Noteholders under the DIP Notes Documents) to the DIP ABL Agent and its lead counsel, the DIP Obligors and their counsel, the U.S. Trustee, and lead counsel to the Creditors' Committee, constitute an event of default under this Final Order (each an "Event of Default") and, upon such notice, interest, including, where applicable, default interest, shall accrue and be payable as set forth in the DIP Notes Indenture. Notwithstanding any order that may be entered dismissing any of these chapter 11 cases under section 1112 of the Bankruptcy Code or converting these chapter 11 cases to cases to a Successor Case: (A) the DIP Superpriority Claims, the Adequate Protection 507(b) Claims, the DIP Notes Liens, the DIP ABL Liens, the Adequate Protection Liens, and the other Adequate Protection Obligations provided to the Prepetition Secured Parties from time to time shall continue in full force and effect, shall maintain their priorities as provided in this Final Order, and shall remain binding on all parties in interest until all of the DIP Notes Obligations, the DIP ABL Obligations, and Adequate Protection Obligations shall have been indefeasibly paid in full in cash;

(B) the other rights granted by this Final Order, including with respect to the Carve-Out, shall not be affected; and (C) the Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Final Order.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect (i) the validity, priority or enforceability of any DIP Notes Obligations, the DIP ABL Obligations, or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Notes Trustee, the DIP ABL Agent, or the Prepetition Representatives, as applicable, of the effective date of such reversal, modification, vacatur or stay; or (ii) the validity, priority and enforceability of the DIP Notes Liens, the DIP ABL Liens, the Adequate Protection Liens, and the Carve-Out. Notwithstanding any such reversal, modification, vacatur or stay, the DIP Notes Obligations, DIP Notes Liens, the DIP ABL Obligations, the DIP ABL Liens, the Adequate Protection Obligations, the Adequate Protection Liens, the DIP Superpriority Claims and the Adequate Protection 507(b) Claims incurred prior to the actual receipt of written notice by the DIP Notes Trustee, the DIP ABL Agent, or the Prepetition Representatives, as applicable, of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties shall be entitled to, and are hereby granted, all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code.

(d) Except as expressly provided in the DIP Orders or in the DIP Notes Documents or the DIP ABL Agreement, as applicable, the DIP Notes Liens, the DIP ABL Liens,

the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection 507(b) Claims and all other rights and remedies of the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties granted by the DIP Orders, the DIP Notes Documents, and the DIP ABL Agreement, as well as the Carve-Out, shall survive, and shall not be modified, impaired or discharged by the entry of an order (i) converting or dismissing any of these chapter 11 cases, or terminating the joint administration of these chapter 11 cases; (ii) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code; (iii) confirming a chapter 11 plan in any of the cases. The terms and provisions of the DIP Orders, the DIP Notes Documents, and the DIP ABL Agreement shall continue in full force and effect in these chapter 11 cases and in any Successor Cases until all DIP Notes Obligations, DIP ABL Obligations, and Adequate Protection Obligations are indefeasibly paid in full in cash, and the DIP Notes Commitments and the commitments under the DIP ABL Facility have been terminated. Any confirmation order entered in these chapter 11 cases shall not discharge or otherwise affect in any way the joint and several obligations of the DIP Obligors to the DIP Notes Secured Parties under the DIP Notes Facility and the DIP Notes Documents, or of the DIP Obligors to the DIP ABL Secured Parties under the DIP ABL Facility and the DIP ABL Agreement, other than after the indefeasible payment in full and in cash of all DIP Notes Obligations and the termination of the DIP Notes Commitments and of all DIP ABL Obligations and the termination of all commitments under the DIP ABL Facility, respectively.

20. *Payment of Fees and Expenses*. The DIP Obligors were, as of the Interim order Entry Date, and hereby are authorized and directed to pay the ABL Adequate Protection Fees and Expenses, the 1L Adequate Protection Fees and Expenses and the 2L Adequate Protection Fees and Expenses. Subject to the review procedures set forth in this paragraph 20, payment of the ABL

Adequate Protection Fees and Expenses, the 1L Adequate Protection Fees and Expenses, and the 2L Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court. Professionals for the DIP Notes Secured Parties, the DIP ABL Secured Parties, the Prepetition ABL Secured Parties, the Prepetition 1L Secured Parties, and the Prepetition 2L Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines with respect to such fees and expenses, including, without limitation, with respect to any DIP Notes Professional Fees or DIP ABL Professional Fees, as applicable; *provided*, *however*, that any time that such professionals seek payment of fees and expenses from the Debtors prior to confirmation of a chapter 11 plan, each such professional shall provide summary copies of its invoices (including aggregate amounts of fees and expenses and total amount of time on a per-professional basis), which are not required to contain time detail and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, to the DIP Obligors, counsel to the Creditors' Committee, and the U.S. Trustee (together, the "Review Parties"); *provided further*, *however*, that the provision of such invoices shall not constitute a waiver of the attorney client privilege or of any benefits of the attorney work product doctrine or any other evidentiary privilege or protection recognized under applicable law; and *provided further,* that the U.S. Trustee and the Creditors' Committee shall have the right to request additional details regarding the services rendered and expenses incurred by such professionals (each an "Information Request"). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) calendar days after receipt (the "Review Period"), which shall not be extended by the delivery of an Information Request. If no written objection is received by 12:00

p.m., prevailing Eastern Time, on the last date of the Review Period, the Debtors shall pay such invoices within five (5) business days thereafter. If an objection to a professional's invoice is received within the Review Period, the Debtors shall promptly pay the undisputed amount of the invoice without the necessity of filing formal fee applications, regardless of whether the invoiced amount arose or was incurred before or after the Petition Date, and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay, on or prior to the Closing Date (as defined in the DIP Notes Indenture), any costs, fees, expenses (including reasonable and documented legal fees and expenses) and other compensation required by the DIP Notes Documents and the DIP ABL Agreement. No attorney or advisor to any DIP Notes Secured Party, any DIP ABL Secured Party, or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to (i) the DIP Notes Secured Parties in connection with the DIP Notes Facility, (ii) the DIP ABL Secured Parties in connection with the DIP ABL Facility, and (iii) the Prepetition Secured Parties in connection with these chapter 11 cases, were, as of the Interim Order Entry Date, and are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtors or any other person.

21. *Effect of Stipulations on Third Parties*. The Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding upon the Debtors in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding upon all other parties in interest, including, without limitation, any statutory or non-statutory committees appointed or formed in these chapter 11 cases

and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless such committee or other party in interest with requisite standing has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein) by no later than: (i) the earlier of (A)(x) as to the Creditors' Committee only, 60 calendar days after the appointment of the Creditors' Committee, (y) if a chapter 7 or a chapter 11 trustee is appointed or elected prior to the end of the Challenge Period (as defined below), the Challenge Period solely for any such chapter 7 trustee or chapter 11 trustee shall be extended to the date that is the later of (1) 75 calendar days after the Interim Order Entry Date, or (2) the date that is 30 calendar days after their appointment, and (z) for all other parties in interest, 75 calendar days after the Interim Order Entry Date and (B) the date that is established as the deadline for filing objections to a sale of substantially all of the Debtors' assets; and (ii) any such later date as (v) has been agreed to in writing by the Prepetition ABL Agent with respect to the Prepetition ABL Obligations or the Prepetition ABL Liens, (w) has been agreed to in writing by the Prepetition 1L Trustee with respect to the Prepetition 1L Obligations or the Prepetition 1L Notes Liens, (x) has been agreed to in writing by the Prepetition 2L Trustee with respect to the Prepetition 2L Obligations or the Prepetition 2L Notes Liens, or (y) has been ordered by the Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(ii), the "Challenge Period"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Secured Obligations or the Prepetition Liens, or (B) asserting or prosecuting any Avoidance Action or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Challenges") against any Prepetition Secured Parties or any of their respective shareholders, members,

subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (collectively, the "Representatives") in connection with or related to the Prepetition Debt Documents, the Prepetition Secured Obligations, the Prepetition Liens and the Prepetition Collateral; and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge; *provided*, *however*, that any pleadings filed in connection with a Challenge shall set forth with specificity the basis for such Challenge and any Challenges not so specified prior to the expiration of the Challenge Period shall be deemed forever and fully waived, released and barred. If no Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such Challenge then: (1) the Debtors' stipulations, admissions, agreements and releases contained in the DIP Orders shall be binding on all parties in interest; (2) the obligations of the Prepetition Obligors under the Prepetition Debt Documents shall constitute allowed claims not subject to defense avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise, except as provided in the Intercreditor Agreements), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity for all purposes in these chapter 11 cases and any Successor Case(s); (3) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual (other than as provided in the Intercreditor Agreements), or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation

by any person or entity, including any statutory or non-statutory committees appointed or formed in these chapter 11 cases or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, and any defense, avoidance, reduction, setoff, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any statutory or non-statutory committees appointed or formed in these chapter 11 cases or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any chapter 7 or chapter 11 trustee or examiner, whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives shall be deemed forever and fully waived, released and barred. If any Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in the DIP Orders shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on each person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in the DIP Orders vests or confers on any person or entity (each as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in these chapter 11 cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to the Prepetition Debt Documents, Prepetition Secured Obligations, Prepetition Collateral or Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay confirmation of any plan of reorganization in these chapter 11 cases. In the event that (i) there is a timely successful challenge by a final non-appealable order, pursuant and

subject to the limitations contained in this paragraph 21, to the repayment of the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations pursuant to this Final Order based upon a successful challenge to the validity, enforceability, extent, perfection or priority of the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations or the liens securing the same, and (ii) the Court unwinds or otherwise modifies the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations (including the disgorgement or reallocation of interest, fees, principal or other incremental consideration paid in respect of the Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations or the avoidance of liens and/or guarantees with respect to the Debtors) then, notwithstanding anything to the contrary in the DIP Orders, any amounts that are determined by the Court to have been improperly applied to any Prepetition ABL Obligations, Prepetition 1L Obligations, and/or Prepetition 2L Obligations as a result of any Challenge or other objection or determination in respect of the Prepetition ABL Obligations (including, without limitation, in connection with the Roll Up), Prepetition 1L Obligations, and/or Prepetition 2L Obligations will, in each case, be first applied to pay dollar-for-dollar any DIP ABL Obligations or DIP Notes Obligations, as applicable, that remain outstanding after any reduction thereof as a result of such successful Challenge or other objection or determination, until the DIP ABL Obligations or DIP Notes Obligations, as applicable, are indefeasibly paid in full in cash. If during the Challenge Period the Creditors' Committee or other third-party files a motion for standing to commence a Challenge consistent with applicable law and rules of procedure, the Challenge Period will be tolled for the Creditors' Committee or other third-party, as applicable, solely with respect to the Challenge(s) asserted in the draft complaint until three (3) business days from the entry of an order granting the motion for standing to prosecute such Challenge(s) described in the draft

complaint and permitted by the Court. The Creditors' Committee agrees that such motion can be heard on an expedited basis if requested by the Debtors.

22. *Limitation on Use of Proceeds of DIP Notes Facility, DIP ABL Facility, Collateral, and Carve-Out*. Notwithstanding any other provision of the DIP Orders or any other order entered by the Court, without the prior written consent of (v) the Required DIP Noteholders solely with respect to the DIP Notes Secured Parties, DIP Notes Obligations and DIP Notes Liens, (w) the Required Lenders (as defined in the DIP ABL Agreement) solely with respect to the DIP ABL Secured Parties, the DIP ABL Obligations, and the DIP ABL Liens, (x) the Required Lenders (as defined in the Prepetition ABL Credit Agreement) solely with respect to the Prepetition ABL Secured Parties, the Prepetition ABL Obligations, the Prepetition ABL Liens and the related Adequate Protection granted in favor of the Prepetition ABL Secured Parties, (y) Prepetition 1L Noteholders holding at least a majority in principal amount of the Prepetition 1L Notes then outstanding solely with respect to the Prepetition 1L Secured Parties, Prepetition 1L Obligations, Prepetition 1L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 1L Secured Parties, and (z) Prepetition 2L Noteholders holding at least a majority in principal amount of the Prepetition 2L Notes then outstanding solely with respect to the Prepetition 2L Secured Parties, Prepetition 2L Obligations, Prepetition 2L Notes Liens and the related Adequate Protection granted in favor of the Prepetition 2L Secured Parties, in each case, as applicable, none of the DIP Notes Facility, the DIP ABL Facility, the DIP Collateral, the Prepetition Collateral (including, without limitation, Cash Collateral), or any portion of the Carve-Out or the Professional Fees Escrow Account (and any amounts therein), nor any of the loans, financial accommodations, or proceeds of any of the foregoing, may be used by any person or entity at any time, directly or indirectly, including, without limitation, through reimbursement of professional fees of any non-

Debtor party, in connection with any: (a) investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings, contested matters, or other litigation, including, without limitation, any Challenge, (i) against any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties, or their respective Representatives, or any action purporting to do the foregoing in respect of the DIP Notes Obligations, DIP Notes Liens, DIP Superpriority Claims, DIP ABL Obligations, DIP ABL Liens, Prepetition Secured Obligations, Adequate Protection Liens, Adequate Protection 507(b) Claims, or other Adequate Protection Obligations or (ii) challenging the amount, validity, perfection, priority, extent, or enforceability of, or asserting any defense, counterclaim or offset with respect to, any of the DIP Notes Obligations, the DIP Notes Liens, the DIP Notes Documents, the DIP ABL Obligations, the DIP ABL Liens, the DIP ABL Agreement, the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Debt Documents, and/or any of the liens, claims, rights, or security interests securing or supporting the DIP Notes Obligations granted under the DIP Orders and the DIP Notes Documents, the DIP ABL Obligations granted under the DIP Orders and the DIP ABL Agreement, or the Prepetition Debt Documents in respect of the Prepetition Secured Obligations, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; *provided that*, notwithstanding anything to the contrary herein, the proceeds of the DIP Notes Facility, DIP ABL Facility and Cash Collateral may each be used by the Creditors' Committee to investigate, but not to prosecute, (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties, up to an aggregate cap of no more than $100,000; (b) attempts to prevent, hinder, or otherwise delay or interfere with any of the Prepetition Secured

Parties', the DIP Notes Secured Parties' or the DIP ABL Secured Parties', as applicable, administration, enforcement, or realization on all or any portion of the Prepetition Secured Obligations, the Prepetition Collateral, the DIP Notes Obligations, the DIP ABL Obligations, or the DIP Collateral, as applicable, or any of the liens, claims and rights granted to such parties under the DIP Orders, the Prepetition Debt Documents, the DIP Notes Documents, the DIP ABL Agreement, or applicable law; (c) attempts to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties, the DIP Notes Secured Parties, or the DIP ABL Secured Parties under the DIP Orders, the Prepetition Debt Documents, the DIP Notes Documents or the DIP ABL Agreement, as applicable, other than in accordance with this Final Order; (d) attempts to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens and claims permitted by the DIP Notes Documents and the DIP ABL Agreement) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Notes Obligations, the DIP ABL Obligations, the DIP Notes Liens, the DIP ABL Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection 507(b) Claims, any other Adequate Protection Obligation, the Prepetition Liens, or any of the Prepetition Secured Obligations; or (e) attempts to pay or to seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are authorized by the Court, agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent, expressly permitted under this Final Order or under the DIP Notes Documents (including the Approved Budget, subject to any permitted variances under, and to the extent required by, the DIP Notes Documents) and the DIP ABL Agreement, in each case unless all of the DIP Notes Obligations, DIP ABL Obligations, Prepetition Secured Obligations, Adequate Protection Obligations, and claims granted to the DIP Notes Secured Parties, DIP ABL Secured Parties, and Prepetition Secured Parties under this Final

Order, have been indefeasibly paid in full in cash or otherwise agreed to in writing by the Required DIP Noteholders and the DIP ABL Agent (at the direction of the Required Lenders (as defined in the DIP ABL Agreement). For the avoidance of doubt, this paragraph 22 shall not limit the Debtors' right to use DIP Collateral to contest that an Event of Default has occurred hereunder pursuant to and consistent with paragraph 10 of this Final Order.

23. *Final Order Governs*. In the event of any inconsistency between the provisions of this Final Order, the DIP Notes Documents, the DIP ABL Agreement, or the Prepetition Debt Documents, the provisions of this Final Order shall govern. Any authorization contained in any other order entered by the Court shall be consistent with and subject to the requirements set forth in this Final Order, the DIP Notes Documents, and the DIP ABL Agreement, including, without limitation, the Approved Budget (subject to any permitted variances under, and to the extent required by, the DIP Notes Documents).

24. *Binding Effect; Successors and Assigns*. The DIP Notes Documents, the DIP ABL Agreement, and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these chapter 11 cases, including, without limitation, the DIP Notes Secured Parties, the DIP ABL Secured Parties, the Prepetition Secured Parties, any statutory or non-statutory committees appointed or formed in these chapter 11 cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Notes Secured Parties, the DIP ABL Secured Parties, the Prepetition Secured Parties, the Debtors, and their respective successors and assigns; *provided* that none of the DIP

Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties shall have any obligation to (and none of them are hereby agreeing or consenting to) permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee or chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

25. Nothing in this Final Order, the DIP Notes Documents, the DIP ABL Agreement, the Prepetition Debt Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Notes Secured Party, DIP ABL Secured Party, or Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral or Prepetition Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of all or any portion of the DIP Collateral or the Prepetition Collateral shall be borne by the Debtors.

26. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Notes Documents or the DIP ABL Agreement, to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to the DIP Orders or the DIP Notes Documents, the DIP ABL Agreement, the Prepetition Debt Documents, or applicable law, as applicable, none of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or Prepetition Secured Parties shall (a) have any liability to any third party or be deemed to be in "control" of the operations of the Debtors;

(b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" or "managing agent" with respect to the operation or management of any of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in the Interim Order or this Final Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Notes Secured Parties, the DIP ABL Secured Parties, or Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective Representatives.

27. *Master Proofs of Claim*. Neither Prepetition Representatives nor any other Prepetition Secured Parties shall be required to file proofs of claim in these chapter 11 cases or any Successor Cases in order to assert claims for payment of any of the Prepetition Secured Obligations, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts payable under the Prepetition Debt Documents. The description of claims and liens in respect of the Prepetition Secured Obligations set forth in this Final Order is deemed to constitute proofs of claim in respect of such indebtedness and its secured status. However, without limiting the foregoing, in order to facilitate the processing of claims, each Prepetition Representative was, upon the Interim Order Entry Date, and hereby is authorized, but not directed or required, to file a master proof of claim in the Debtors' lead case *Anagram Holdings, LLC.*, Case No. 23-90901 (MI), on behalf of the applicable Prepetition Secured Parties (each, a "Master Proof of Claim"), which shall be deemed to have been filed against each Debtor. The provisions of this paragraph 27 and the filing of Master Proofs of Claim, if any, are intended solely for the purpose of administrative

convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan filed in these chapter 11 cases. The Master Proofs of Claim shall not be required to include any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the applicable Prepetition Representative. None of the DIP Notes Secured Parties or the DIP ABL Secured Parties shall be required to file proofs of claim with respect to the DIP Notes Obligations or the DIP ABL Obligations, respectively.

28. *Insurance*. To the extent that any Prepetition Representative is listed as a loss payee under the insurance policies of any of the DIP Obligors, the DIP Notes Trustee and the DIP ABL Agent shall also be deemed to be a loss payee under such insurance policies until the indefeasible payment in full of the DIP Notes Obligations and the DIP ABL Obligations (in each case, other than contingent indemnification obligations as to which no claim has been asserted) and termination of the DIP Notes Commitment and the commitments under the DIP ABL Facility and shall act in that capacity and distribute any proceeds recovered or received in respect of such insurance policies in accordance with this Final Order.

29. *Credit Bidding DIP Notes Obligations and DIP ABL Obligations*. (a) the DIP Notes Trustee (acting at the direction of requisite DIP Noteholders under the DIP Notes Documents) shall have the right to credit bid, up to the full amount of the DIP Notes Obligations in any sale of the DIP Collateral, and (b) subject to the expiration of the Challenge Period and the Challenge rights set forth in paragraph 21 of this Final Order, the DIP ABL Agent shall have the right to credit bid, up to the full amount of the DIP ABL Obligations in any sale of the DIP Collateral, in each case, without the need for further Court order authorizing the same, whether

any such sale is effectuated through section 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise; *provided* that the DIP Notes Obligations may not be used to credit bid in any disposition of any ABL Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP ABL Obligations and the Prepetition ABL Obligations; *provided further,* that neither the DIP ABL Obligations nor any Prepetition ABL Obligations may be used to credit bid in any disposition of any Notes Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP Notes Obligations, Prepetition 1L Obligations and Prepetition 2L Obligations.

30. *Credit Bidding Prepetition Secured Obligations.* Subject to the terms and provisions of the Intercreditor Agreements and the lien priorities set forth herein and in the Intercreditor Agreements and unless the Court for cause orders otherwise, and subject to the expiration of the Challenge Period and the Challenge rights set forth in paragraph 21 of this Final Order, each Prepetition Representative shall have the right, consistent with the provisions of the Prepetition Debt Documents, as applicable (and providing for the DIP Notes Obligations and the DIP ABL Obligations to be either (i) assumed or (ii) indefeasibly repaid in full in cash and the termination of the DIP Notes Commitments and of all commitments under the DIP ABL Facility, respectively), to credit bid, up to the full amount of the applicable Prepetition Secured Obligations, in the sale of the applicable Prepetition Collateral, without the need for further Court order authorizing the same, whether any such sale is effectuated through section 363(k), 1123 or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code or otherwise; *provided* that neither the Prepetition 1L Obligations nor the Prepetition 2L Obligations may be used to credit bid in any disposition of any ABL Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP ABL Obligations and the Prepetition

ABL Obligations; *provided further,* that no Prepetition ABL Obligations may be used to credit bid in any disposition of any Notes Priority Collateral unless such sale provides for indefeasible payment in full in cash of all DIP Notes Obligations, Prepetition 1L Obligations and Prepetition 2L Obligations.

31. *Modification of Automatic Stay*. The automatic stay under section 362(a) of the Bankruptcy Code was, upon the Interim Order Entry Date, and hereby is modified to the extent necessary to effectuate all of the terms and provisions of the DIP Orders, including, without limitation, to: (a) permit the Debtors to grant the DIP Notes Liens, the DIP ABL Liens, DIP Superpriority Claims, Adequate Protection Liens and the Adequate Protection 507(b) Claims; (b) permit the Debtors to perform such acts as the DIP Notes Secured Parties, the DIP ABL Secured Parties, or Prepetition Secured Parties may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Notes Secured Parties, the DIP ABL Secured Parties, and Prepetition Secured Parties under this Final Order; (d) authorize the Debtors to pay, and the DIP Notes Secured Parties, the DIP ABL Secured Parties, and Prepetition Secured Parties to retain and apply, any payments made in accordance with the terms of the DIP Orders; and (e) permit the DIP Notes Secured Parties, the DIP ABL Secured Parties, and Prepetition Secured Parties, subject to the terms of the DIP Orders, to exercise all rights and remedies provided for hereunder.

32. *Effectiveness*. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014, any Local Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

33. *Governing Order*. Notwithstanding the relief granted in any other order by the Court, (i) all payments and actions by any of the Debtors pursuant to the authority granted therein shall be subject to this Final Order, including compliance with the Approved Budget and all other terms and conditions hereof, and (ii) to the extent there is any inconsistency between the terms of such other order and this Final Order or between the Interim Order and this Final Order, this Final Order shall control, in each case, except to the extent expressly provided otherwise in the other order.

34. *Headings*. Paragraph headings used herein are for convenience only and shall not affect the construction of, or to be taken into consideration in interpreting, this Final Order.

35. *Payments Held in Trust*.

(a) Except as expressly permitted in this Final Order or the DIP Notes Documents and except with respect to the DIP Obligors, in the event that any person or entity receives any payment on account of a security interest in the DIP Collateral (other than ABL Priority Collateral), receives any DIP Collateral (other than ABL Priority Collateral) or any proceeds of the DIP Collateral (other than ABL Priority Collateral) or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP Notes Obligations and termination of all DIP Notes Commitments, such person or entity shall be deemed to have received, and shall hold, any such DIP Collateral or any payment on account or proceeds thereof (other than ABL Priority Collateral) in trust for the benefit of the DIP Notes Secured Parties and shall immediately turn over such collateral or its proceeds to the DIP Notes Trustee, or as otherwise instructed by the Court, for application in accordance with the DIP Notes Documents and this Final Order.

(b) Except as expressly permitted in this Final Order or the DIP ABL Agreement, and except with respect to the Debtors, in the event that any person or entity receives any payment on account of a security interest in the ABL Priority Collateral, receives any ABL Priority Collateral or any proceeds of the ABL Priority Collateral or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP ABL Obligations and all Prepetition ABL Obligations and the termination of all commitments under each such facility, such person or entity shall be deemed to have received, and shall hold, any such ABL Priority Collateral or any payment on account or proceeds thereof in trust for the benefit of the DIP ABL Secured Parties and the Prepetition ABL Secured Parties, as applicable, and shall immediately turn over such collateral or its proceeds to the DIP ABL Agent or the Prepetition ABL Agent, as applicable, or as otherwise instructed by the Court, for application in accordance with the DIP ABL Agreement, the Prepetition ABL Loan Documents, and this Final Order. For the avoidance of doubt, this paragraph will not apply to payments made or assets transferred by the Debtors as authorized under the Bankruptcy Code or any order of the Court.

36. *DIP ABL Agreement*.[7]

(a) The "DIP ABL Agreement" is hereby defined as, is deemed to consist of, and hereby incorporates the terms and conditions of (x) the DIP Orders (y) the Prepetition ABL Loan Documents (as modified and to the extent not in conflict with the DIP Orders) and (z) all other agreements, instruments, and documents evidencing the DIP ABL Obligations from time to time that are executed or delivered in accordance with the DIP Orders. In this regard, the Prepetition ABL Credit Agreement and the other Prepetition ABL Loan Documents govern the

[7] Capitalized terms used in this Paragraph 36 that are not otherwise defined herein shall have the meanings given to them in the Prepetition ABL Credit Agreement.

DIP ABL Facility to give meaning or effect to the provisions of this paragraph 36 in particular and for the purposes of governing the payment of interest, the calculation and implementation of the Borrowing Base, including the institution of Reserves (subject to the limitations and parameters set forth therein and herein), and otherwise to provide for the mechanics of the DIP ABL Facility. Notwithstanding anything contained in the DIP ABL Agreement or the Prepetition ABL Loan Documents, (x) the exercise of remedies of the DIP ABL Secured Parties are limited to the relief provided in the DIP Orders and may only be exercised upon the occurrence and continuance of an DIP ABL Termination Event and (y) the conditions to borrowing under the DIP ABL Facility are limited to the requirements set forth in the DIP Orders.

(b) *Borrowing Base Certificates and other Reporting*. On the basis required during an Increased Reporting Period, the Debtors will deliver to the DIP ABL Agent such financial reporting, Borrowing Base Certificates and other information concerning the Debtors and the DIP Collateral as required by Sections 5.1 and 5.2 of the Prepetition ABL Credit Agreement. To the extent not otherwise contained in such reporting, the Debtors will include with the delivery of each Borrowing Base Certificate a calculation of Excess Availability on the basis set forth in paragraph 36(f) below. In addition, the Debtors will deliver to the DIP ABL Agent copies of all reporting regarding the DIP Collateral or otherwise required by the DIP Notes Indenture when due thereunder, and will in all events not later than the Thursday of each week (commencing with the Thursday following the Thursday that is two full weeks after the Petition Date) deliver a detailed variance report comparing the Debtors' actual performance for the most recently ended four-week period occurring after the Petition Date to the Approved Budget for such period (or, prior to the completion of such four-week period following the Petition Date, budgeted receipts or budgeted disbursements, as applicable, on an aggregate basis, for each full fiscal week completed, and on a

cumulative basis, after the Petition Date and prior to the date of such delivery); it being understood that delivery of the Variance Report (as defined in the DIP Notes Indenture in effect on the date hereof) shall satisfy the foregoing requirement. The Debtors shall provide the Creditors' Committee's advisors with copies of all financial reporting provided to the DIP ABL Agent substantially simultaneously with such delivery to the DIP ABL Agent.

(c) *Reserves*. The DIP ABL Agent may administer the Borrowing Base, and implement, increase, decrease and otherwise modify Reserves against the Borrowing Base (including, without limitation, in connection with field exams or appraisals conducted during the term of the DIP ABL Facility), subject to its Permitted Discretion and to the extent generally consistent with past practices permitted under the Prepetition ABL Credit Agreement; *provided* that (x) the DIP ABL Agent shall not increase or otherwise modify Reserves or change Borrowing Base assumptions solely as a result of the commencement of these chapter 11 cases or the insolvency or financial condition of the Debtors at any time before the closing of these chapter 11 cases and (y) any Reserves (whether in effect prior to or after the Petition Date) may only reduce the Borrowing Base and not the Revolver Commitment under the DIP ABL Facility; *provided, further*, for the avoidance of doubt, the DIP ABL Agent may implement and modify Reserves, subject to its Permitted Discretion, from time to time on account of and to the extent of (i) accrued fees and expenses of Professional Persons not yet covered by amounts deposited in the Professional Fees Escrow Account (predicated on such amounts in the Approved Budget and its supporting Borrowing Base forecast) and (ii) the Post-Carve-Out Trigger Notice Cap.

(d) *Interest, Fees, Costs and Other Amounts Due in Respect of the DIP ABL Obligations*. The Debtors were, upon the Interim Order Entry Date, and hereby are authorized and directed to pay the following, to the DIP ABL Agent, on behalf of itself and the DIP ABL Secured

Parties, in immediately available funds, and if the Debtors fail to pay such amounts when due in cash, then the DIP ABL Agent may, at its election in its sole and absolute discretion, make an advance of DIP ABL Obligations to pay such amounts at any time: (i) promptly upon the Interim Order Entry Date, all accrued and unpaid amounts (whether accrued prior to or after the Petition Date) in respect of the following, and (ii) thereafter, as and when due under the DIP ABL Agreement or as provided herein (whichever is earlier), (A) all interest accruing and payable at an amount equal to (x) with respect to the Prepetition ABL Obligations, the non-default rate for interest provided for under the Prepetition ABL Credit Agreement, and (y) with respect to the DIP ABL Obligations, the default rate for interest provided for under the Prepetition ABL Credit Agreement (with the default rate of interest under the DIP ABL Facility being 2% above the foregoing rate described in this clause (y)), (B) all professional fees and expenses incurred by the Prepetition ABL Secured Parties and DIP ABL Secured Parties (*provided* that such amounts arising after the Petition Date must also be permitted to be paid pursuant to paragraph 20 of this Final Order), (C) all amounts due in respect of Bank Product Obligations, and (D) unused line and other fees in Section 2.10 of the Prepetition ABL Loan Documents but as applied to the DIP ABL Facility and (E) a $200,000 commitment fee which was due and paid to DIP ABL Agent within two (2) Business Days following the Interim Order Entry Date.

(e) *Letters of Credit; Hedge Agreements*. Immediately prior to the entry of the DIP Orders (i) no letters of credit are issued and outstanding under the Prepetition ABL Credit Agreement, and no new letters of credit under the DIP ABL Facility will be required to be issued after the Petition Date except in the Issuing Banks‘ sole discretion, and (ii) no Hedge Agreements exist under the Prepetition ABL Loan Documents and no new Hedge Agreements will be entered into after the Petition Date except in the DIP ABL Agent's sole discretion.

(f) *Repayments of the DIP ABL Obligations Prior to Maturity*. In addition to prepayments required by the terms of the Prepetition ABL Credit Agreement that are made applicable to the DIP ABL Facility by the DIP Orders (including, without limitation, in connection with out of the ordinary course sales of ABL Priority Collateral), the Debtors are authorized and required to make payments to the DIP ABL Agent on account of principal amounts of the DIP ABL Obligations immediately, at any time and to the extent that the Debtors have less than $3,000,000 of unrestricted cash liquidity consisting of not less than $1,500,000 of Excess Availability; *provided* that the trade payables to be taken into account for purposes of determining such Excess Availability will only include such payables (i) first incurred after the Petition Date, (ii) relating to the delivery of goods within the twenty (20) day period immediately prior to the Petition Date, or (iii) related to leases or executory contracts that the Debtors designate or move to assume (whether or not assigned) in connection with any sale or plan in these chapter 11 cases.

(g) *Borrowings under the DIP ABL Facility*. The terms and provisions in the Prepetition ABL Credit Agreement related to the process for Debtors to request and receive loan advances thereunder will apply to such matters under the DIP ABL Facility, except that (w) the matters described in Sections 4.13 and 4.18 of the DIP ABL Agreement shall, on the date of such advance, be true and correct without any modification and without the DIP Issuers making any representation or warranty in respect thereof other than as described on, and as qualified by, paragraph 19 of **Exhibit 4**, (x) the stated condition to such advances that no Defaults or Events of Default shall exist shall be deemed to mean that the DIP ABL Facility Maturity Date (as defined below) has not or will not occur as a result of such requested advance and that the Debtors are otherwise in compliance with all of the terms of the DIP Orders, before and after giving effect to any such advance, (y) the required representations and warranties made in connection therewith

are limited to those described in paragraph 19 of **Exhibit 4** hereof and (z) for purposes of determining amounts permitted to be borrowed or required to be paid under the DIP ABL Facility from time to time, (1) the aggregate "Revolver Commitment" of all Prepetition ABL Lender and DIP ABL Lender, and the initial "Maximum Revolver Amount" will be deemed to be $15,000,000, (2) the Borrowing Base will be calculated taking all otherwise applicable prepetition and postpetition property of the Debtors into account, and (3) the determination of existing or outstanding "Revolver Usage", "Revolving Loan Exposure", "Revolving Loans" will take both the applicable Prepetition ABL Obligations and DIP ABL Obligations into account.

(h) *Cash Dominion*. Notwithstanding anything to the contrary, a "Cash Dominion Period" under and as defined in the Prepetition ABL Loan Documents will be deemed to exist at all times from and after the Petition Date as set forth herein, and, at all times no Prepetition ABL Obligations are outstanding, all funds now and hereafter deposited in the Collection Account may be remitted on a daily basis to the DIP ABL Agent to be applied to the DIP ABL Obligations (subject to re-borrowing by the DIP Obligors in accordance with the terms and conditions of this Final Order and subject to the funding of the Carve-Out).

(i) *DIP ABL Facility Maturity Date*. All DIP ABL Obligations shall be due and payable, and the DIP ABL Secured Parties' commitment to provide advances of the DIP ABL Obligations and consent to the use of Cash Collateral shall terminate, at the election of the DIP ABL Agent, upon such date (the "DIP ABL Facility Maturity Date") that is the earliest of: (i) April 30, 2024 and (ii) the occurrence of a DIP ABL Termination Event.

(j) *Reaffirmation*. Subject to paragraph 20 herein, the terms and provisions of the DIP ABL Agreement (as modified pursuant to the DIP Orders) are, and will be deemed to be, valid, binding, and fully enforceable against each of the parties thereto from time to time as and to

the same extent enforceable against such parties under the Prepetition ABL Loan Documents, and each party thereto is hereby deemed to have reaffirmed and ratified all of the terms and provisions of the Prepetition ABL Loan Documents in connection with the Roll Up and to have agreed that all such terms and provisions (including, without limitation, all of the guaranties, mortgages, and subordination agreements of each such party, as applicable) under the Prepetition ABL Loan Documents, and all of the liens and security interests granted by such party under the Prepetition ABL Loan Documents in respect of the Prepetition ABL Obligations, will, and will be deemed to, also secure and apply equally to all of the obligations (including all of the DIP ABL Obligations) under the DIP ABL Agreement. Without limiting the foregoing, all of the obligations and agreements of each party to the Prepetition ABL Loan Documents (including, without limitation, all of the guaranties, mortgages, and subordination agreements of each such party, as applicable), and all of the liens and security interests granted by such party thereunder in respect of the Prepetition ABL Obligations, will, and will be deemed to, also secure and apply equally to all of the obligations (including all of the DIP ABL Obligations) under the DIP ABL Agreement.

37. *Bankruptcy Rules*. The requirements of Bankruptcy Rules 4001, and 6004, in each case to the extent applicable, are satisfied by the contents of the DIP Motion.

38. *No Third Party Rights*. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary, which rights are hereby expressly disclaimed.

39. *Necessary Action*. The Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, and the Prepetition Secured Parties are authorized to take all reasonable actions as are necessary or appropriate to implement the terms of this Final Order. The automatic stay was, by the Interim Order, and is modified to permit affiliates of the Debtors who are not debtors

in these chapter 11 cases to take all actions as are necessary or appropriate to implement the terms of this Final Order.

40. *Retention of Jurisdiction*. The Court shall retain jurisdiction to enforce the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

41. *Interim Order*. Except as specifically amended, superseded, or modified hereby, the provisions of the Interim Order and any actions taken by the Debtors, the DIP Notes Secured Parties, the DIP ABL Secured Parties, or the Prepetition Secured Parties in accordance therewith shall remain in effect and are hereby ratified by this Final Order.

42. The Debtors shall promptly serve copies of this Final Order (which shall constitute adequate notice of the Final Hearing) on the parties having been given notice of the Final Hearing and to any party that has filed with the Court a request for notices in these chapter 11 cases.

Signed: December 06, 2023

Marvin Isgur
United States Bankruptcy Judge

Exhibit 1

Prepetition ABL Credit Agreement

EXECUTION VERSION

CREDIT AGREEMENT

by and among

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION,

as Sole Lead Arranger and Sole Book Runner,

THE LENDERS FROM TIME TO TIME PARTY HERETO

as the Lenders,

ANAGRAM HOLDINGS, LLC and

ANAGRAM INTERNATIONAL, INC.,

as Borrowers

Dated as of May 7, 2021

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT, is entered into as of May 7, 2021 by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association ("Wells Fargo"), as administrative agent for each member of the Lender Group and the Bank Product Providers (in such capacity, together with its successors and assigns in such capacity, "Agent"), Wells Fargo, as sole lead arranger and sole bookrunner, **ANAGRAM HOLDINGS, LLC**, a Delaware limited liability company ("Anagram LLC"), **ANAGRAM INTERNATIONAL, INC.**, a Minnesota corporation ("Company"), and those additional entities that hereafter become parties hereto as Borrowers in accordance with the terms hereof by executing the form of Joinder attached hereto as Exhibit J-1 (each, together with Anagram LLC and the Company, a "Borrower" and collectively, jointly and severally, the "Borrowers").

WHEREAS, Borrowers have requested that the Lenders provide a revolving credit facility, and the Lenders have indicated their willingness to lend, in each case on the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, the parties hereto covenant and agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1. **Definitions**. As used in this Agreement, the following terms shall have the following definitions:

"90-Day Excess Availability" means the quotient obtained by dividing (i) the sum of each day's Excess Availability during the 90-consecutive day period immediately preceding the proposed transaction by (ii) 90.

"ABL Facility Priority Lien Collateral" has the meaning specified therefor in the Intercreditor Agreement.

"Acceptable Appraisal" means, with respect to an appraisal of Inventory, the most recent appraisal of such property received by Agent (a) from an appraisal company reasonably satisfactory to Agent, (b) the scope and methodology (including, to the extent relevant, any sampling procedure employed by such appraisal company) of which are reasonably satisfactory to Agent, and (c) the results of which are reasonably satisfactory to Agent, in each case, in Agent's Permitted Discretion.

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

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

"Account Party" has the meaning specified therefor in Section 2.11(h) of this Agreement.

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Acquired Indebtedness" means, with respect to any specified Person:

(a) Indebtedness of any other Person existing at the time such other Person is consolidated, merged or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging or amalgamating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(b) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"Acquisition" means (a) the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of (or any division or business line of) any other Person, or (b) the purchase or other acquisition (whether by means of a merger, amalgamation, consolidation, or otherwise) by a Person or its Subsidiaries of all of the Equity Interests of any other Person.

"Additional Documents" has the meaning specified therefor in Section 5.12 of this Agreement.

"Administrative Borrower" has the meaning specified therefor in Section 17.13 of this Agreement.

"Administrative Questionnaire" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Agent" has the meaning specified therefor in the preamble to this Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1 to this Agreement (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Borrowers and the Lenders).

"Agent's Liens" means the Liens granted by each Loan Party to Agent, for the benefit of the Lender Group, under the Loan Documents and securing the Obligations.

"Agreement" means this Credit Agreement, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"AIHI" means Anagram International Holdings, Inc., a Minnesota corporation.

"Anagram LLC" has the meaning specified therefor in the preamble to this Agreement.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery or corruption in any jurisdiction in which any Borrower or any of its Restricted Subsidiaries or Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Borrower or any of its Restricted Subsidiaries or Affiliates is located or is doing business that relate to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Margin" means (a) in the case of a Base Rate Loan which is a Revolving Loan, 1.50% percentage points (the "Base Rate Margin"), and (b) in the case of a LIBOR Rate Loan which is a Revolving Loan, 2.50% percentage points (the "LIBOR Rate Margin").

"Applicable Rate" means, (i) the Daily One Month LIBOR plus the LIBOR Rate Margin, or (ii) if the Daily One Month LIBOR is no longer available or cannot be calculated for any reason (including as a result of any market disruption generally) or Wells Fargo determines that it is unlawful or impractical to offer the Daily One Month LIBOR, the Base Rate plus the Base Rate Margin.

"Applicable Unused Line Fee Percentage" means, as of any date of determination, the applicable percentage set forth in the following table that corresponds to the Average Revolver Usage of Borrowers for the most recently completed calendar month as determined by Agent; provided, that for the period from the Closing Date through and including May 31, 2021, the Applicable Unused Line Fee Percentage shall be set at the rate in the row titled "Level II" in the table below; provided further, that any time an Event of Default has occurred and is continuing,

the Applicable Unused Line Fee Percentage shall be set at the margin in the row titled "Level II" in the table below:

Level	Average Revolver Usage	Applicable Unused Line Fee Percentage
I	≥ 50% of the Maximum Revolver Amount	0.50%
II	< 50% of the Maximum Revolver Amount	1.00%

The Applicable Unused Line Fee Percentage shall be re-determined on the first date of each month by Agent.

"Application Event" means the occurrence of (a) a failure by Borrowers to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(iii) of this Agreement.

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its activities and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Asset Sale" means:

(a) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction) of any Borrower or any of its Restricted Subsidiaries (each referred to in this definition as a "disposition"); or

(b) the issuance or sale of Equity Interests of any Restricted Subsidiary, whether in a single transaction or a series of related transactions;

in each case, other than:

(i) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) surplus, obsolete, damaged or worn out property or Equipment in the ordinary course of business or any disposition of Inventory or goods (or other assets) held for sale in the ordinary course of business and (iii) property no longer used or useful in the conduct of business of the Borrowers and their Restricted Subsidiaries;

(ii) [**Reserved**];

(iii) the making of any Restricted Payment that is permitted to be made, and is made, under Section 6.2;

(iv) any disposition of assets of any Borrower or any Restricted Subsidiary or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate Fair Market Value of less than $1,000,000 and with an aggregate Fair Market Value for all such transactions not to exceed $3,000,000 in any fiscal year;

(v) any disposition of property or assets or issuance of securities by a Guarantor to a Borrower or by a Borrower or a Guarantor to another Borrower; provided that in the case of a sale of Collateral, the transferee shall cause such amendments, supplements or other instruments to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien on the Collateral owned by or transferred to the transferee, together with such financing statements or comparable documents as may be required to perfect any security interests in such Collateral, which may be perfected by the filing of a financing statement or a similar document under the UCC or other similar statute or regulation of the relevant states or jurisdictions; to the extent allowable under Section 1031 of the IRC, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(vi) (A) the lease, assignment, sublease, license or sublicense of any real or personal property in the ordinary course of business and (B) the termination of leases in the ordinary course of business;

(vii) any disposition arising from foreclosure, casualty, condemnation or any similar action or transfers by reason of eminent domain with respect to any property or other asset of any Borrower or any of the Restricted Subsidiaries or exercise of termination rights under any lease, sublease, license, sublicense, concession or other agreement;

(viii) dispositions in connection with the granting of a Lien that is permitted under Section 6.6;

(ix) the issuance by a Restricted Subsidiary of Preferred Stock or Disqualified Stock that is permitted under Section 6.1;

(x) any grant in the ordinary course of business of any license of patents, trademarks, know-how or any other intellectual property, including, but not limited to, grants of franchises or licenses, franchise or license master agreements and/or area development agreements; provided any such grants to Affiliates shall be treated as a disposition subject to the requirements of Section 6.5(a) hereof, and if such grant, when treated as a disposition subject to Section 6.5(a), is not in compliance with the requirements of Section 6.5(a), such grant shall constitute an "Asset Sale";

(xi) dispositions of Accounts in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings;

(xii) the discount of Inventory, Accounts or notes receivable, or the conversion of Accounts to notes receivable, in each case in the ordinary course of business;

(xiii) the abandonment of intellectual property rights in the ordinary course of business which in the reasonable good faith determination of the Borrowers are not material to the conduct of the business of the Borrowers and the Restricted Subsidiaries taken as a whole; provided that any such abandonments shall be treated as a disposition subject to the requirements of Section 6.5(a) hereof, and if such abandonment, when treated as a disposition subject to Section 6.5(a), is not in compliance with the requirements of Section 6.5(a) hereof, such abandonment shall constitute an "Asset Sale."

(xiv) licenses for the conduct of licensed departments within the Borrowers in the ordinary course of business;

(xv) termination of Hedge Obligations pursuant to the terms of the applicable Hedge Agreements;

(xvi) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind in the ordinary course of business;

(xvii) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(xviii) dispositions of property to the extent that (A) such property is exchanged for credit against the purchase price of similar replacement property or (B) an amount equal to the Net Cash Proceeds of such disposition are promptly applied to the purchase price of such replacement property.

"Assignee" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to this Agreement (or in such other form as is mutually agreed by the Administrative Borrower and Agent).

"Authorized Person" means any one of the individuals identified as an officer of a Borrower on Schedule A-2 to this Agreement, or any other individual identified by Administrative Borrower as an authorized person and authenticated through Agent's electronic platform or portal in accordance with its procedures for such authentication.

"Availability" means, as of any date of determination, the amount that Borrowers are entitled to borrow as Revolving Loans under Section 2.1 of this Agreement (after giving effect to the then outstanding Revolver Usage).

"Average Revolver Usage" means, with respect to any period, the sum of the aggregate amount of Revolver Usage for each day in such period (calculated as of the end of each respective day) *divided by* the number of days in such period.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank Product" means any one or more of the following financial products or accommodations extended to any Loan Party or any of its Subsidiaries by a Bank Product Provider: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")), (b) payment card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, (f) foreign exchange facilities, or (g) transactions under Hedge Agreements.

"Bank Product Agreements" means those agreements entered into from time to time by any Loan Party or any of its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount reasonably determined by Agent as sufficient to satisfy the reasonably estimated credit exposure, operational risk or processing risk with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by each Borrower and its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to a Borrower or its Subsidiaries.

"Bank Product Provider" means Wells Fargo or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider.

"Bank Product Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate to establish (based upon the Bank Product Providers' determination of the liabilities and obligations of each Borrower and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time.

"Base Rate" means the greatest of (a) one-half of one percent (0.50%) *per annum*, (b) the Federal Funds Rate *plus* ½%, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).

"Base Rate Loan" means each portion of the Revolving Loans that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" has the meaning set forth in the definition of "Applicable Margin".

"Benchmark Replacement" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by Agent and Administrative Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the Daily One Month LIBOR for Dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement shall be deemed to be zero for the purposes of this Agreement.

"Benchmark Replacement Adjustment" means, with respect to any replacement of the Daily One Month LIBOR with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Agent and Administrative Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Daily One Month LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Daily One Month LIBOR with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes

to the definition of "Base Rate", timing and frequency of determining rates and making payments of interest and other administrative matters) that Agent in consultation with Administrative Borrower decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent decides that adoption of any portion of such market practice is not administratively feasible or if Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as Agent in consultation with Administrative Borrower decides is reasonably necessary in connection with the administration of this Agreement).

"Benchmark Replacement Date" means the earlier to occur of the following events with respect to the Daily One Month LIBOR:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event", the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of the Daily One Month LIBOR permanently or indefinitely ceases to provide the Daily One Month LIBOR; or

(b) in the case of clause (c) of the definition of "Benchmark Transition Event", the date of the public statement or publication of information referenced therein.

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the Daily One Month LIBOR:

(a) a public statement or publication of information by or on behalf of the administrator of the Daily One Month LIBOR announcing that such administrator has ceased or will cease to provide the Daily One Month LIBOR, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Daily One Month LIBOR;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of the Daily One Month LIBOR, the Federal Reserve System of the United States (or any successor), an insolvency official with jurisdiction over the administrator for the Daily One Month LIBOR, a resolution authority with jurisdiction over the administrator for the Daily One Month LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for the Daily One Month LIBOR, which states that the administrator of the Daily One Month LIBOR has ceased or will cease to provide the Daily One Month LIBOR permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Daily One Month LIBOR; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of the Daily One Month LIBOR announcing that the Daily One Month LIBOR is no longer representative.

"Benchmark Transition Start Date" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective

event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by Agent or the Required Lenders, as applicable, by notice to Administrative Borrower, Agent (in the case of such notice by the Required Lenders) and the Lenders.

"Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Daily One Month LIBOR and solely to the extent that the Daily One Month LIBOR has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the Daily One Month LIBOR for all purposes hereunder in accordance with Section 2.12(a) and (y) ending at the time that a Benchmark Replacement has replaced the Daily One Month LIBOR for all purposes hereunder pursuant to Section 2.12(a).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulations.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

"BHC Act Affiliate" of a Person means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such Person.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person, or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Board of Governors" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board Resolution" means a resolution of the Board of Directors of the applicable Person, certified pursuant to an Officer's Certificate.

"Borrower" and "Borrowers" have the respective meanings specified therefor in the preamble to this Agreement.

"Borrower Materials" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Borrowing" means a borrowing consisting of Revolving Loans made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of an Extraordinary Advance.

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

(a) 85% of the amount of Eligible Accounts, *less* the amount, if any, of the Dilution Reserve, *plus*

(b) *the lesser of*

(i) $9,000,000, and

(ii) the lesser of (A) the product of 60% multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Finished Goods Inventory at such time, and (B) the product of 85% multiplied by the Net Recovery Percentage identified in the most recent Acceptable Appraisal of Inventory, multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Finished Goods Inventory (such determination may be made as to different categories of Eligible Finished Goods Inventory based upon the Net Recovery Percentage applicable to such categories) at such time, *plus*

(iii) the lesser of (A) the product of 60% multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Raw Materials Inventory at such time, and (B) the product of 85% multiplied by the Net Recovery Percentage identified in the most recent Acceptable Appraisal of Inventory, multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Raw Materials Inventory (such determination may be made as to different categories of Eligible Raw Materials Inventory based upon the Net Recovery Percentage applicable to such categories) at such time, *minus*

(c) the aggregate amount of Reserves, if any, established by Agent from time to time under Section 2.1(c) of this Agreement.

"Borrowing Base Certificate" means a certificate substantially in the form of Exhibit B-1 to this Agreement (or in such other form as mutually agreed by Administrative Borrower and Agent), which such form of Borrowing Base Certificate may be amended, restated, supplemented or otherwise modified from time to time (including without limitation changes to the format thereof), as approved by Agent in Agent's reasonable discretion.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of Minnesota, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"Capital Expenditures" means, with respect to any Person for any period, the sum of (a) the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed, including all Financing Lease Obligations, obligations under synthetic leases and Capitalized Software Expenditures that are paid or due and payable during such period and (b) to the extent not covered by clause (a) above, the aggregate of all expenditures by such Person and its Subsidiaries during such period to acquire by purchase or otherwise the business or fixed assets of, or the Capital Stock of, any other Person.

"Capital Stock" means:

(a) in the case of a corporation, shares in the capital of such corporation;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;

(c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Capitalized Software Expenditures" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Subsidiaries during such period in respect of licensed or purchased software or internally developed software and enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person and such Subsidiaries.

"Cash Equivalents" means:

(a) Dollars;

(b) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;

(c) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than $250,000,000 and permitted under clause (b) above;

(d) repurchase obligations for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above, and in each case in Dollars;

(e) commercial paper rated at least "A2" by Moody's or at least "A" by S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within 24 months after the date of creation thereof, and in each case in Dollars;

(f) marketable short-term money market and similar securities having a rating of at least "A2" or "A" from either Moody's or S&P, respectively (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within 24 months after the date of creation thereof and in Dollars;

(g) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an

Investment Grade Rating from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency) with maturities of 24 months or less from the date of acquisition;

(h) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency) with maturities of 24 months or less from the date of acquisition and in each case in Dollars;

(i) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated "AAA-" (or the equivalent thereof) or better by S&P or "Aaa3" (or the equivalent thereof) or better by Moody's and in each case in Dollars; and

(j) investment funds investing substantially all of their assets in securities of the types described in clauses (a) through (i) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than Dollars; provided that such amounts are converted into Dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, other merchant services, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Change in Law" means the occurrence after the date of this Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided, 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 concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means the occurrence of any of the following after the Closing Date:

(a) the sale, lease or transfer, in one or a series of related transactions (other than by way of merger or consolidation), of all or substantially all of the assets of Parent and its Subsidiaries, taken as a whole, to any Person other than one or more Permitted Holders;

(b) the sale, lease or transfer, in one or a series of related transactions (other than by way of merger or consolidation), of all or substantially all of the assets of the Borrowers and their Subsidiaries, taken as a whole, to any Person other than one or more Permitted Holders; or

(c) Parent and/or the Borrowers become aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by (A) any Person (other than one or more Permitted Holders) or (B) Persons (other than one or more Permitted Holders) that are together (1) a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), or (2) are acting, for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), as a group, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of more than 50% of the total voting power of the Voting Stock of Parent or more than 50% of the total voting power of the Voting Stock of either (x) the Company or (y) Anagram LLC. For purposes of this definition, a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement. Notwithstanding the foregoing, a transaction will not be deemed to be a Change of Control under this clause (c) if Parent or any of the Borrowers, as applicable, becomes a direct or indirect Wholly-Owned Subsidiary of one or more holding companies (which may include Parent in respect of the Borrowers) and immediately following that transaction no Person or group, other than one or more Permitted Holders, beneficially owns, directly or indirectly, more than 50% (with respect to Parent) or 50% (with respect to each Borrower) of the Voting Stock of each such holding company.

"Closing Date" means the date of the making of the initial Revolving Loan (or other extension of credit) under this Agreement.

"Code" means the New York Uniform Commercial Code, as in effect from time to time.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by any Borrower or any Guarantor in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents; provided that the definition of "Collateral" shall not include any Excluded Collateral (as defined in the Guaranty and Security Agreement).

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in any Borrower's or any Guarantor's books and records or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Commitment" means, with respect to each Lender, its Revolver Commitment and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of this Agreement.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Company" has the meaning specified therefor in the preamble to this Agreement.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 to this Agreement (or in such other form as is mutually agreed by Administrative Borrower and Agent) delivered by the chief financial officer or treasurer of Administrative Borrower to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of this Agreement.

"Consolidated Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including without limitation the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated Interest Expense" means, with respect to any Person for any period, without duplication, the sum of:

(a) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income (including (i) amortization of original issue discount resulting from the issuance of Indebtedness at less than par, (ii) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (iii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedge Obligations or other derivative instruments pursuant to GAAP), (iv) the interest component of Financing Lease Obligations, and (v) net payments, if any, made (less net payments, if any, received) pursuant to interest rate Hedge Obligations with respect to Indebtedness, and excluding (A) penalties and interest related to taxes, (B) amortization of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (C) any expensing of bridge, commitment and other financing fees, (D) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting; *plus*

(b) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *less*

(c) interest income of such Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Borrowers to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; provided, however, that, without duplication,

(a) any after-tax effect of extraordinary, non-recurring or unusual gains or losses, including costs of and payments of legal settlements, fines, judgments or orders (less all fees and expenses relating thereto) shall be excluded,

(b) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(c) any net after-tax gains, charges or losses with respect to disposed, abandoned, closed or discontinued operations (other than assets held for sale) and any accretion or accrual of discounted liabilities and with respect to facilities or distribution centers that have been closed during such period, shall be excluded,

(d) any after-tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions (including asset retirement costs) or returned surplus assets of any employee pension benefit plan other than in the ordinary course of business shall be excluded,

(e) the Net Income for such period of any Person that is not a Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; provided that Consolidated Net Income of the Borrowers shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period by such Person,

(f) effects of fair value adjustments (including the effects of such adjustments pushed down to the Borrowers and their Restricted Subsidiaries) in the merchandise inventory, property and equipment, goodwill, intangible assets, deferred revenue, deferred rent, deferred franchise fees and debt line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of acquisition accounting in relation to any consummated acquisition and the amortization or write-off or removal of revenue otherwise recognizable of any amounts thereof, net of taxes, shall be excluded or added back in the case of lost revenue,

(g) any after-tax effect of income (loss) from the early extinguishment or conversion of Indebtedness or Hedge Obligations or other derivative instruments shall be excluded,

(h) any impairment charge or asset write-up, write-off or write-down, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(i) any non-cash compensation charge or expense, including any such charge or expense arising from the grant of stock appreciation or similar rights, stock options, restricted stock or other equity incentive programs shall be excluded,

(j) any fees and expenses incurred during such period, or any amortization or write-off thereof for such period in connection with any Acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded,

(k) any net gain or loss resulting from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk) and any foreign currency translation gains or losses shall be excluded,

(l) the excess of (i) GAAP rent expense over (ii) actual cash rent paid, including the benefit of lease incentives shall be excluded and the excess of (i) actual cash rent paid, including the benefit of lease incentives, over (ii) GAAP rent expense shall be included (in each case during such period due to the use of straight line rent for GAAP purposes), and

(m) any unrealized net gains and losses resulting from Hedge Obligations and the application of Statement of Financial Accounting Standards No. 133 shall be excluded.

In addition, to the extent not already included in the Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement.

"Consolidated Total Debt Ratio" means, as of any date of determination, the ratio of (1) Consolidated Total Indebtedness of Borrowers and their Restricted Subsidiaries as of the end of the most recent fiscal quarter for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur to (2) Borrowers' EBITDA for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such event for which such calculation is being made shall occur, in each case with such *pro forma* adjustments to Consolidated Total Indebtedness and EBITDA as are appropriate and consistent with the *pro forma* effect and adjustment provisions set forth in the definition of "Fixed Charge Coverage Ratio".

"Consolidated Total Indebtedness" means, as at any date of determination, an amount equal to (x) the sum of (1) the aggregate amount of all Indebtedness of Borrowers and their Restricted Subsidiaries on a consolidated basis then outstanding, (2) the aggregate undrawn amount under this Agreement then outstanding and (3) the aggregate amount of all Disqualified

Stock of Borrowers and all Preferred Stock of their Restricted Subsidiaries on a consolidated basis then outstanding, with the amount of such Disqualified Stock and Preferred Stock equal to the greater of their respective voluntary or involuntary liquidation preferences and maximum fixed repurchase prices, in each case determined on a consolidated basis in accordance with GAAP; provided that Indebtedness of Borrowers and their Restricted Subsidiaries under any revolving credit facility (excluding, for the avoidance of doubt, in the case of the this Agreement) as at any date of determination shall be determined using the Average Monthly Balance of such Indebtedness for the most recently ended four fiscal quarters for which internal financial statements are available as of such date of determination (the "Reference Period"). For purposes hereof, (a) the "maximum fixed repurchase price" of any Disqualified Stock or Preferred Stock that does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock as if such Disqualified Stock or Preferred Stock were purchased on any date on which Consolidated Total Indebtedness shall be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by Borrowers, (b) "Average Monthly Balance" means, with respect to any Indebtedness incurred by Borrowers or their Restricted Subsidiaries under a revolving credit facility, the quotient of (x) the sum of each Individual Monthly Balance for each fiscal month ended on or prior to such date of determination and included in the Reference Period divided by (y) 12, and (c) "Individual Monthly Balance" means, with respect to any Indebtedness incurred by Borrowers or their Restricted Subsidiaries under a revolving credit facility during any fiscal month of the Borrowers, the quotient of (x) the sum of the aggregate outstanding principal amount of all such Indebtedness at the end of each day of such fiscal month divided by (y) the number of days in such fiscal month.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(a) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(b) to advance or supply funds:

(i) for the purchase or payment of any such primary obligation; or

(ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by a Borrower or a Guarantor, Agent, First Lien

Trustee, Second Lien Trustee and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Copyright Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Covenant Testing Period" means a period (a) commencing on the last day of the fiscal month of Borrowers most recently ended prior to a Covenant Trigger Event for which Borrowers are required to deliver to Agent monthly, quarterly or annual financial statements pursuant to Schedule 5.1 to this Agreement, and (b) continuing through and including the first day after such Covenant Trigger Event that Excess Availability has equaled or exceeded the greater of (i) 20% of the Maximum Revolver Amount, and (ii) $3,000,000 for 30 consecutive days.

"Covenant Trigger Event" means if at any time Excess Availability is less than the greater of (i) 20% of the Maximum Revolver Amount, and (ii) $3,000,000.

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified therefor in Section 17.15 of this Agreement.

"Credit Facilities" means, with respect to any Borrower or any of its Restricted Subsidiaries, one or more debt facilities, including the facility pursuant to this Agreement, and any other financing arrangements (including, without limitation, commercial paper facilities, note purchase agreements or indentures) providing for revolving credit loans, term loans, letters of credit, bank guarantees, notes, debt securities or other indebtedness for borrowed money, including any mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof, in whole or in part, and any debt facilities, credit facilities, commercial paper facilities, note purchase agreements, indentures or other financing arrangements that replace, refund, supplement or refinance any part of the loans, notes, credit facilities, commitments or other indebtedness thereunder, including any such replacement, refunding, supplemental or refinancing facility, arrangement or indenture that increases the amount permitted to be borrowed or issued thereunder or alters the maturity thereof.

"Daily One Month LIBOR" for any day means the greater of (a) the rate per annum for Dollar deposits determined by Agent for the purpose of calculating the effective interest rate for loans that reference Daily One Month LIBOR as the London Inter-Bank Market Offered Rate in effect from time to time for the one month delivery of funds in amounts approximately equal to

the principal amount of such loans (and if such rate is below zero, the Daily One Month LIBOR shall be deemed to be zero) and (b) 0.50% per annum. Borrowers understand and agree that Agent may base its determination of the London Inter-Bank Market Offered Rate upon such offers or other market indicators of the London Inter-Bank Market as Agent, in its discretion, deems appropriate, including but not limited to the rate offered for Dollar deposits on the London Inter-Bank Market. When interest is determined in relation to Daily One Month LIBOR, each change in the interest rate will become effective each Business Day that Agent determines that Daily One Month LIBOR has changed.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and Administrative Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent, Issuing Bank, or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified any Borrower, Agent or Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by Agent or Administrative Borrower, to confirm in writing to Agent and Administrative Borrower that it will comply with its prospective funding obligations hereunder (provided, that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Agent and Administrative Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of any Insolvency Proceeding, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery

of written notice of such determination to Administrative Borrower, Issuing Bank, and each Lender.

"Defaulting Lender Rate" means (a) for the first three days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the Applicable Rate.

"Deposit Account" means any deposit account (as that term is defined in the Code).

"Designated Account" means the Deposit Account of Administrative Borrower identified on Schedule D-1 to this Agreement (or such other Deposit Account of Administrative Borrower located at Designated Account Bank that has been designated as such, in writing, by Borrowers to Agent).

"Designated Account Bank" has the meaning specified therefor in Schedule D-1 to this Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by Borrowers to Agent).

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior twelve months, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers' Accounts (excluding Accounts owing from Affiliates of Borrowers) during such period, by (b) Borrowers' billings with respect to Accounts (excluding Accounts owing from Affiliates of Borrowers) during such period.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by the extent to which Dilution is in excess of 5%.

"Disqualified Institutions" means those Persons (the list of all such Persons, the "Disqualified Institutions List") that are (a) identified in writing by Administrative Borrower to Agent prior to the Closing Date, (b) competitors of Borrowers and their Subsidiaries (other than bona fide fixed income investors or debt funds) that are identified in writing by Administrative Borrower from time to time or (c) Affiliates of such Persons set forth in clauses (a) and (b) above (in the case of Affiliates of such Persons set forth in clause (b) above, other than bona fide fixed income investors or debt funds) that are either (i) identified in writing by Administrative Borrower from time to time or (ii) clearly identifiable on the basis of such Affiliate's name; provided, that, to the extent Persons are identified as Disqualified Institutions in writing by Administrative Borrower to Agent prior to the Closing Date pursuant to clauses (b) or (c)(i), the inclusion of such Persons as Disqualified Institutions shall not retroactively apply to prior assignments or participations in respect of any Loan under this Agreement. Notwithstanding the foregoing, Administrative Borrower, by written notice to Agent, may from time to time in its sole discretion remove any entity from the Disqualified Institutions List (or otherwise modify such list to exclude any particular entity), and such entity removed or excluded from the Disqualified Institutions List shall no longer be a Disqualified Institution for any purpose under this Agreement or any other Loan Document.

"Disqualified Institutions List" has the meaning as set forth in the definition of "Disqualified Institutions".

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise or is redeemable at the option of the holder thereof (in each case other than solely as a result of a change of control or asset sale; provided that the relevant change of control or asset sale provisions, taken as a whole, are no more favorable to holders of such Capital Stock than the change of control and asset sale provisions hereunder and any purchase requirement triggered thereby may not become operative until (or contemporaneously with) compliance with the asset sale and change of control provisions applicable to hereunder), in whole or in part, in each case prior to the date 91 days after the earlier of the Latest Maturity Date; provided, further, that if such Capital Stock is issued to any current or former employee or to any plan for the benefit of employees, directors, officers, members of management or consultants of the Borrowers or their Subsidiaries or by any such plan to such employees, directors, officers, members or management or consultants, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrowers or their Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability.

"Dollars" or "$" means United States dollars.

"Domestic Subsidiary" means any Subsidiary of any Loan Party that is not a Foreign Subsidiary.

"Drawing Document" means any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit, including by electronic transmission such as SWIFT, electronic mail, facsimile or computer generated communication.

"Early Opt-in Election" means the occurrence of:

(a) (i) a determination by Agent, (ii) a determination by Agent following a request by Administrative Borrower to so determine, or (iii) a notification by the Required Lenders to Agent (with a copy to Administrative Borrower) that the Required Lenders have determined that Dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.12(c) are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Daily One Month LIBOR, and

(b) (i) the election by Agent (in consultation with Administrative Borrower) or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by Agent of written notice of such election to Administrative Borrower and the Lenders or by the Required Lenders of written notice of such election to Agent.

"EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period:

(a) increased (without duplication) by:

(i) provision for taxes based on income or profits or capital, including, without limitation, state, franchise, property and similar taxes and foreign withholding taxes and foreign unreimbursed value added taxes (including, in each case, penalties and interest related to such taxes or arising from tax examinations) of or with respect to such Person paid or accrued during such period deducted (and not added back) in computing Consolidated Net Income (including the amount treated as having been paid by such Persons pursuant to Section 6.2(b)(iv)); *plus*

(ii) bank fees and costs of surety bonds in connection with financing activities, plus amounts excluded from Consolidated Interest Expense as set forth in clauses (A), (B), (C), and (D) in the definition thereof, to the extent the same were deducted (and not added back) in calculating such Consolidated Net Income; *plus*

(iii) Consolidated Depreciation and Amortization Expense of such Person for such period to the extent the same was deducted (and not added back) in computing Consolidated Net Income; *plus*

(iv) any expenses or charges (other than depreciation or amortization expense) related to any offering of Qualified Capital Stock, Permitted Investment, Permitted Acquisition, disposition, recapitalization or the incurrence of Indebtedness permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful), in each case, deducted (and not added back) in computing Consolidated Net Income to the extent the aggregate amount of all such expenses and charges for such period does not exceed $2,500,000; *plus*

(v) the amount of any restructuring costs, charges, accruals, reserves or expenses attributable to the undertaking and/or implementation of cost savings initiatives, operating expense reductions, business optimization and other restructuring costs, charges, accruals, reserves and expenses (including, without limitation, inventory optimization programs, software development costs, costs related to entry into new markets and consulting fees), to the extent the aggregate amount of all such costs, charges, accruals, reserves or expenses for such period does not exceed $2,500,000; *plus*

(vi) any other non-cash charges, including (A) any write offs or write downs, (B) equity based awards compensation expense, (C) losses on sales, disposals or abandonment of, or any impairment charges or asset write off related to, intangible assets, long-lived assets and investments in debt and equity securities, (D) all losses from investments recorded using the equity method and (E) other non-cash charges, non-cash expenses or non-cash losses reducing Consolidated Net Income for such period (provided that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period); *plus*

(vii) the amount of any minority interest expense consisting of Subsidiary income attributable to minority equity interests of third parties in any non-Wholly-Owned Subsidiary deducted (and not added back) in such period in calculating Consolidated Net Income; *plus*

(viii) any net loss from disposed or discontinued operations; *plus*

(ix) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing EBITDA or Net Income in any period to the extent non-cash gains relating to such income were deducted in the calculation of EBITDA pursuant to clause (b) below for any previous period and not added back,

(b) decreased (without duplication) by:

(i) non-cash gains increasing Consolidated Net Income of such Person for such period, excluding any non-cash gains to the extent they represent the reversal of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period and any non-cash gains with respect to cash actually received in a prior period so long as such cash did not increase EBITDA in such prior period, *plus*

(ii) any net gain from discontinued operations or net gains from the disposal of discontinued operations, each to the extent increasing Consolidated Net Income; and

(c) increased or decreased by (without duplication), as applicable, any adjustments resulting from the application of ASC Topic Number 460 (Guarantees).

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Accounts" means those Accounts created by a Borrower in the ordinary course of its business, that arise out of such Borrower's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any information with respect to the

Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination performed by (or on behalf of) Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, finance charges, service charges, discounts, credits, allowances, and rebates. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within 120 days of original invoice date or 60 days of due date,

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) [**Reserved**],

(d) Accounts with respect to which the Account Debtor is an Affiliate of any Borrower or an employee or agent of any Borrower or any Affiliate of any Borrower,

(e) Accounts (i) arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional, or (ii) with respect to which the payment terms are "C.O.D.", cash on delivery or other similar terms,

(f) Accounts that are not payable in Dollars,

(g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States, Canada or the United Kingdom, or (ii) is not organized under the laws of the United States, Canada or the United Kingdom or any state, province or other political subdivision thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and, if requested by Agent, is directly drawable by Agent, or (B) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrowers have complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States or any other Governmental Authority,

(i) Accounts with respect to which the Account Debtor is a creditor of a Borrower, has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(j) Accounts owing by an Account Debtor if such Account Debtor's Eligible Accounts owing to Borrowers exceed 20% (such percentage, as applied to such Account Debtor, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that in each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(k) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which any Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(l) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful, including by reason of the Account Debtor's financial condition,

(m) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(n) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity,

(p) Accounts (i) that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Borrower of the subject contract for goods or services, or (ii) that represent credit card sales, or

(q) Accounts owned by a target acquired in connection with a Permitted Acquisition or Permitted Investment, or Accounts owned by a Person that is joined to this Agreement as a Borrower pursuant to the provisions of this Agreement, until the completion of a field examination with respect to such Accounts, in each case, satisfactory to Agent in its Permitted Discretion.

"Eligible Assignee" means (a) a Lender, (b) a commercial bank, insurance company, finance company, financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act), in each case, having total assets in excess of $250,000,000, (c) any Affiliate of a Lender, (d) an Approved Fund of a Lender and (e) after the occurrence and during the continuance of a Specified of Default, a Disqualified Institution; provided that in any event, "Eligible Assignee" shall not include (i) any natural person, (ii) any Defaulting Lender, or (iii) any Borrower, any Subsidiary thereof, or any Affiliate thereof.

"Eligible Finished Goods Inventory" means Inventory that qualifies as Eligible Inventory and consists of first quality finished goods held for sale in the ordinary course of a Borrower's business.

"Eligible Inventory" means Inventory of a Borrower that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any information with respect to the Borrowers' business or assets of which Agent becomes aware after the Closing Date, including any field examination or appraisal performed or received by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

(a) a Borrower does not have good, valid, and marketable title thereto,

(b) a Borrower does not have actual and exclusive possession thereof (either directly or through a bailee or agent of a Borrower),

(c) it is not located at one of the locations in the continental United States set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14) (or in-transit from one such location to another such location),

(d) it is stored at locations holding less than $50,000 of the aggregate value of such Borrower's Inventory,

(e) it is in-transit to or from a location of a Borrower (other than in-transit from one location set forth on Schedule 4.25 to this Agreement to another location set forth on Schedule 4.25 to this Agreement (as such Schedule 4.25 may be amended from time to time in accordance with Section 5.14)),

(f) it is located on real property leased by a Borrower or in a contract warehouse or with a bailee, in each case, unless either (i) it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises, or (ii) Agent has established a Landlord Reserve with respect to such location,

(g) it is the subject of a bill of lading or other document of title,

(h) it is not subject to a valid and perfected first priority Agent's Lien,

(i) it consists of goods returned or rejected by a Borrower's customers,

(j) it consists of goods that are obsolete, slow moving, spoiled or are otherwise past the stated expiration, "sell-by" or "use by" date applicable thereto, restrictive or custom items or otherwise is manufactured in accordance with customer-specific requirements, work-in-process, or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in Borrowers' business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment,

(k) it is subject to third party intellectual property, licensing or other proprietary rights, unless Agent otherwise agrees in its Permitted Discretion, or

(l) it was acquired in connection with a Permitted Acquisition or Permitted Investment, or such Inventory is owned by a Person that is joined to this Agreement as a Borrower pursuant to the provisions of this Agreement, until the completion of an Acceptable Appraisal of such Inventory and the completion of a field examination with respect to such Inventory that is satisfactory to Agent in its Permitted Discretion.

"Eligible Raw Material Inventory" means Inventory that qualifies as Eligible Inventory and consists of goods that are first quality raw materials.

"Employee Benefit Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA, (a) that is sponsored, maintained or contributed to by any Borrower or Restricted Subsidiary or with respect to which any Borrower or Restricted Subsidiary has an obligation to contribute or (b) a Pension Plan.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Borrower, any Subsidiary of any Borrower, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Borrower, any Restricted Subsidiary of any Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Borrower or any Restricted Subsidiary, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the Code).

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of any Borrower or its Restricted Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of any Borrower or its Restricted Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which any Borrower or any of its Restricted Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with any Borrower or any of its Restricted Subsidiaries and whose employees are aggregated with the employees of such Borrower or its Restricted Subsidiaries under IRC Section 414(o).

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning specified therefor in Section 8 of this Agreement.

"Excess Availability" means, as of any date of determination, the amount equal to Availability *minus* the aggregate amount, if any, of all trade payables of the Borrowers and their Restricted Subsidiaries aged in excess of sixty (60) days from the due dates thereof and all book overdrafts of the Borrowers and their Restricted Subsidiaries in excess of historical practices with respect thereto, in each case as determined by Agent in its Permitted Discretion.

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

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty of such Loan Party of (including by virtue of the joint and several liability provisions of Section 2.15), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guaranty or security interest is or becomes illegal.

"Excluded Taxes" means (a) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes) and any franchise taxes, in each case, (i) imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in

which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office is located or (ii) that are Other Connection Taxes, (b) United States federal withholding taxes that would not have been imposed but for a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of this Agreement, (c) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office, other than a designation made at the request of a Borrower), except to the extent that, pursuant to Section 16.1 of this Agreement, amounts with respect to such taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, and (d) any United States federal withholding taxes imposed under FATCA.

"Extraordinary Advances" has the meaning specified therefor in Section 2.3(d)(iii) of this Agreement.

"Fair Market Value" means the price which could be negotiated in an arm's-length, free market transaction between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction, as reasonably determined in good faith (a) by senior management of Anagram LLC or (b) for determinations in excess of $1,000,000, the Board of Directors of Anagram LLC and evidenced by a Board Resolution.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), and (a) any current or future regulations or official interpretations thereof, (b) any agreements entered into pursuant to Section 1471(b)(1) of the IRC, and (c) any intergovernmental agreement entered into by the United States (or any fiscal or regulatory legislation, rules, or practices adopted pursuant to any such intergovernmental agreement entered into in connection therewith).

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate *per annum* equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"Fee Letter" means that certain fee letter, dated as of even date with this Agreement, among Borrowers and Agent.

"Financing Lease Obligation" means, at the time any determination thereof is to be made, an obligation that is required to be accounted for as a finance lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP, including, without limitation, Statement of Financial Accounting Standards Board's Accounting Standards Codification 842 and related accounting rules and regulations, as such may be amended or re-codified from time to time, which obligation effectively transfers control of the underlying asset and constitutes an in-substance financed purchase of an asset; provided that the amount of any Financing Lease Obligation shall be the amount thereof accounted for as a liability in accordance with GAAP; and provided, further and for avoidance of doubt, the term "Financing Lease Obligation" does not include obligations under any operating leases that do not effectively transfer control of the underlying asset and do not represent an in-substance financed purchase of an asset under GAAP, including, without limitation, Statement of Financial Accounting Standards Board's Accounting Standards Codification 842 and related accounting rules and regulations, as such may be amended or re-codified from time to time, notwithstanding that GAAP and such accounting rules and regulations, such as Statement of Financial Accounting Standards Board's Accounting Standards Codification 842, may require that such obligations be recognized on the balance sheet of such Person as a lease liability (along with the related right-of-use asset).

"First Lien Collateral Trustee" means Ankura Trust Company, LLC, as collateral trustee under the First Lien Indenture, and its successors in such capacity.

"First Lien Documents" means, collectively, the First Lien Indenture, the First Lien Notes and the other agreements, instruments and documents evidencing or securing the First Lien Indebtedness.

"First Lien Indebtedness" means the Indebtedness of the Borrowers and the Guarantors under the First Lien Documents.

"First Lien Indenture" means that certain Indenture, dated as of July 30, 2020, by and among the Borrowers, the guarantors party thereto, First Lien Trustee and First Lien Collateral Trustee, with respect to the Borrowers' 15.00% PIK/Cash Senior Secured First Lien Notes due 2025, as amended, restated, amended and restated, supplemented or otherwise modified from time to time as permitted pursuant to the Intercreditor Agreement.

"First Lien Notes" means, collectively, the securities issued pursuant to the First Lien Indenture.

"First Lien Trustee" means Ankura Trust Company, LLC, as trustee under the First Lien Indenture, and its successors in such capacity.

"Fixed Charge Coverage Ratio" means, with respect to the Borrowers and their Restricted Subsidiaries on a consolidated basis for any period, the ratio of (a) the result of (i) EBITDA for such period *minus* (ii) the sum of (A) all Capital Expenditures made during such period and (B) all income Taxes paid or payable during such period (including any amount treated as having been paid pursuant to Section 6.2(b)(iv) during such period) to (b) the sum of (i) all principal of Indebtedness scheduled to be paid or prepaid during such period (to the extent there

is an equivalent permanent reduction in the commitments thereunder) and (ii) all Fixed Charges for such period. In the event that either of the Borrowers or any Restricted Subsidiary incurs, assumes, guarantees, repurchases, redeems, retires or extinguishes any Indebtedness (other than Indebtedness incurred or repaid under any revolving Credit Facility unless such Indebtedness has been permanently repaid and has not been replaced) or issues, repurchases or redeems Disqualified Stock or Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but prior to or simultaneously with the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Fixed Charge Coverage Ratio Calculation Date"), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, repurchase, redemption, retirement or extinguishment of Indebtedness, or such issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, as if the same had occurred at the beginning of the applicable four-quarter period.

For purposes of making the computation referred to above, Investments, Acquisitions, dispositions, amalgamations, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) and any operational changes that the Borrowers or any of their Restricted Subsidiaries have made during the four-quarter reference period or subsequent to such reference period and on or prior to or simultaneously with the Fixed Charge Coverage Ratio Calculation Date shall be calculated on a *pro forma* basis assuming that all such Investments, Acquisitions, dispositions, amalgamations, mergers, consolidations, discontinued operations and operational changes (and the change in any associated fixed charge obligations and the change in EBITDA resulting therefrom) had occurred on the first day of the four-quarter reference period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into either of the Borrowers or any of their Restricted Subsidiaries since the beginning of such period shall have made any Investment, Acquisition, disposition, amalgamation, merger, consolidation, discontinued operation or operational change that would have required adjustment pursuant to this definition, then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Investment, Acquisition, disposition, discontinued operation, merger, amalgamation, consolidation or operational change had occurred at the beginning of the applicable four-quarter period.

For purposes of this definition, whenever *pro forma* effect is to be given to an Investment, Acquisition, disposition, amalgamation, merger, consolidation, discontinued operation or operational change, the *pro forma* calculations shall be made in good faith by a responsible financial or accounting officer of the Administrative Borrower. If any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the Fixed Charge Coverage Ratio Calculation Date had been the applicable rate for the entire period (taking into account any Hedge Obligations applicable to such Indebtedness). Interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer of the Administrative Borrower to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Administrative Borrower may reasonably

designate in good faith. Interest on any Indebtedness under a revolving Credit Facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period.

For purposes of this definition, any amount in a currency other than Dollars will be converted to U.S. dollars based on the average exchange rate for such currency for the most recent twelve month period immediately prior to the date of determination in a manner consistent with that used in calculating EBITDA for the applicable period.

"Fixed Charges" means, with respect to any Person for any period, the sum, without duplication, of:

(a) Consolidated Interest Expense of such Person for such period;

(b) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Preferred Stock during such period;

(c) all cash dividends or other distributions paid (excluding items eliminated in consolidation) on any series of Disqualified Stock during such period; and

(d) other Restricted Payments paid during such period.

"Flood Laws" means the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, and related laws, rules and regulations, including any amendments or successor provisions.

"Foreign Lender" means any Lender or Participant that is not a United States Person within the meaning of IRC section 7701(a)(30).

"Foreign Subsidiary" means any direct or indirect subsidiary of any Loan Party that is organized under the laws of any jurisdiction other than the United States, any state thereof or the District of Columbia.

"Funding Date" means the date on which a Borrowing occurs.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied. For purposes of this Agreement, the term "consolidated" with respect to any Person means such Person consolidated with its Restricted Subsidiaries.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, county, municipal or any other level, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers

or functions of, or pertaining to, government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guarantor" means (a) each Person that guaranties all or a portion of the Obligations, including without limitation AIHI, and any Person that is a "Guarantor" under the Guaranty and Security Agreement, and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of this Agreement.

"Guaranty and Security Agreement" means a guaranty and security agreement, dated as of even date with this Agreement, executed and delivered by each of the Loan Parties to Agent.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of each Loan Party and its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means Wells Fargo or any of its Affiliates.

"Immaterial Subsidiary" means, with respect to the Borrowers, any Subsidiary designated in good faith by the board of directors and evidenced by a Board Resolution as an Immaterial Subsidiary, other than AIHI. At the time of designation as an Immaterial Subsidiary each such Subsidiary must have total assets with a Fair Market Value of less than $1,000,000. The Fair Market Value of the total assets of all Immaterial Subsidiaries of the Borrowers, in the aggregate, may not exceed $2,000,000 at any time. If at any time and from time to time after the Closing Date, the Fair Market Value of the total assets of any Immaterial Subsidiary of the Borrowers exceeds $1,000,000 (or all Immaterial Subsidiaries of the Borrowers, in the aggregate, exceeds $2,000,000), then the Borrower shall promptly designate in writing to Agent that such Subsidiary is (or one or more of such Subsidiaries are) no longer an Immaterial Subsidiary for purposes of this Agreement to the extent required such that the foregoing conditions cease to be true. Notwithstanding the foregoing, AIHI shall not be deemed to be an Immaterial Subsidiary hereunder.

"Increased Reporting Event" means if at any time Excess Availability is less than the greater of (a) 20% of the Maximum Revolver Amount, and (b) $3,000,000.

"Increased Reporting Period" means the period commencing after the continuance of an Increased Reporting Event for 3 consecutive Business Days and continuing until the date when no Increased Reporting Event has occurred for 60 consecutive days.

"Indebtedness" means, with respect to any Person, without duplication:

(a) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(i) in respect of borrowed money;

(ii) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(iii) representing the balance deferred and unpaid of the purchase price of any property (including Financing Lease Obligations), except (A) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation, in each case accrued in the ordinary course of business, (B) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and is not paid after becoming due and payable, and (C) any such obligations under ERISA or liabilities associated with customer prepayments; or

(iv) representing any Hedge Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit (other than commercial letters of credit) and Hedge Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(b) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (a) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business;

(c) to the extent not otherwise included, the obligations of the type referred to in clause (a) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; provided, however, that the amount of such Indebtedness will be the lesser of: (i) the Fair Market Value of such asset at such date of determination, and (ii) the amount of such Indebtedness of such other Person;

(d) any earn-out or similar obligation; and

(e) any Disqualified Stock;

provided, however, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (1) Contingent Obligations incurred in the ordinary course of business and (2) deferred or prepaid revenues.

Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of the Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed an incurrence of Indebtedness under this Agreement.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Taxes" means, (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of, any Loan Party under any Loan Document, and (b) to the extent not otherwise described in the foregoing clause (a), Other Taxes.

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant, in each case of nationally recognized standing that is, in the good faith reasonable judgment of the Borrowers, qualified to perform the task for which it has been engaged.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of even date with this Agreement, among Agent, First Lien Collateral Trustee and Second Lien Collateral Trustee, and acknowledged by the Borrowers and the Guarantors, as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms.

"Intra-Company Agreements" means (a) the services agreement for the provision of corporate services by Parent or its affiliates to the Company, (b) the product purchase agreement for the purchases of products from the Company by Parent or its affiliates and (c) the intellectual property license agreement among Parent, its affiliates and the Company, in each case, as amended from time to time.

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

"Inventory Reserves" means, as of any date of determination, (a) Landlord Reserves in respect of Inventory, and (b) those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves for slow moving Inventory and Inventory shrinkage) with respect to Eligible Inventory or the Maximum Revolver Amount, including based on the results of appraisals.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, or, in either case, an equivalent rating by any other Rating Agency.

"Investment Grade Securities" means:

(a) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(b) securities or instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Borrowers and their Subsidiaries; and

(c) investments in any fund that invests exclusively in investments of the type described in clauses (a) and (b) which fund may also hold immaterial amounts of cash pending investment or distribution.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, reasonable travel and similar advances to officers, directors, distributors, consultants and employees, in each case made in the ordinary course of business and consistent with past practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes thereto) of the Borrowers in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. The amount of any Investment shall be deemed to be the amount actually invested, without adjustment for subsequent increases or decreases in value or any write-downs or write-offs, but giving effect to any repayments thereof in the form of loans and any return on capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of such Investment).

"IRC" means the Internal Revenue Code of 1986, as amended.

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any version or revision thereof accepted by the Issuing Bank for use.

"Issue Date" means July 30, 2020.

"Issuer Document" means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of Issuing Bank and relating to such Letter of Credit.

"Issuing Bank" means Wells Fargo or any other Lender that, at the request of Borrowers and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Bank for the purpose of issuing Letters of Credit pursuant to Section 2.11 of this Agreement, and Issuing Bank shall be a Lender.

"Joinder" means a joinder agreement substantially in the form of Exhibit J-1 to this Agreement (or in such other form as mutually agreed by Administrative Borrower and Agent).

"Landlord Reserve" means, as to each location at which a Borrower has Inventory or books and records located and as to which a Collateral Access Agreement has not been received by Agent, a reserve in an amount equal to 3 months' rent, storage charges, fees or other amounts under the lease or other applicable agreement relative to such location or, if greater and Agent so elects, the number of months' rent, storage charges, fess or other amounts for which the landlord, bailee, warehouseman or other property owner will have, under applicable law, a Lien in the Inventory of such Borrower to secure the payment of such amounts under the lease or other applicable agreement relative to such location.

"Latest Maturity Date" means the latest maturity or expiration date applicable to the Second Lien Indebtedness.

"Lender" has the meaning set forth in the preamble to this Agreement, shall include Issuing Bank and the Swing Lender, and shall also include any other Person made a party to this Agreement pursuant to the provisions of Section 13.1 of this Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders (including Issuing Bank and the Swing Lender) and Agent, or any one or more of them (as the context requires).

"Lender Group Expenses" means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by any Loan Party under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with each Loan Party under any of the Loan Documents, including, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, publication, real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to any Loan Party or its Subsidiaries, (d) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable, documented out-of-pocket costs and expenses paid or

incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) reasonable and documented field examination, appraisal, and valuation fees and expenses of Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 5.7(b) of this Agreement, (h) Agent's and Lenders' reasonable, documented costs and expenses (limited in the case of counsel to the reasonable and documented fees and expenses of one counsel to Agent and a single local counsel in each applicable jurisdiction, as may be required by Agent, and not more than a single firm of outside counsel and a single firm of local counsel in each applicable jurisdiction as may reasonably be required for the Lender Group) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred by the Lender Group, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with any Loan Party or any of its Subsidiaries, (i) Agent's reasonable and documented out-of-pocket costs and expenses (including reasonable and documented attorneys' fees and due diligence expenses of one counsel to Agent, as well as any necessary local counsel) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents, and (j) Agent's and each Lender's reasonable and documented out-of-pocket costs and expenses (including reasonable and documented attorneys, accountants, consultants, and other advisors fees and out-of-pocket expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of this Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit (as that term is defined in the Code) issued by Issuing Bank pursuant to this Agreement.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent (including that Agent has a first priority perfected Lien in such cash collateral), including provisions that specify that the Letter of Credit Fees and all commissions, fees, charges and expenses provided for in Section 2.11(k) of this Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Revolving Lenders in an amount equal to 105% of the then existing Letter of Credit Usage, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably

satisfactory to Agent and Issuing Bank, terminating all of such beneficiaries' rights under the Letters of Credit, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to 105% of the then existing Letter of Credit Usage (it being understood that the Letter of Credit Fee and all fronting fees set forth in this Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by Issuing Bank pursuant to a Letter of Credit.

"Letter of Credit Exposure" means, as of any date of determination with respect to any Lender, such Lender's participation in the Letter of Credit Usage pursuant to Section 2.11(e) on such date.

"Letter of Credit Fee" has the meaning specified therefor in Section 2.6(b) of this Agreement.

"Letter of Credit Indemnified Costs" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Related Person" has the meaning specified therefor in Section 2.11(f) of this Agreement.

"Letter of Credit Sublimit" means $3,000,000.

"Letter of Credit Usage" means, as of any date of determination, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit, *plus* (b) the aggregate amount of outstanding reimbursement obligations with respect to Letters of Credit which remain unreimbursed or which have not been paid through a Revolving Loan.

"LIBOR Rate Loan" means each portion of a Revolving Loan that bears interest at a rate determined by reference to the Daily One Month LIBOR.

"LIBOR Rate Margin" has the meaning set forth in the definition of Applicable Margin.

"Lien" means, with respect to any asset, any mortgage, lien, deed of trust, hypothecation, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement), any lease in the nature thereof; provided that in no event shall an operating lease be deemed to constitute a Lien.

"Loan" means any Revolving Loan, Swing Loan or Extraordinary Advance made (or to be made) hereunder.

"Loan Account" has the meaning specified therefor in Section 2.9 of this Agreement.

"Loan Documents" means this Agreement, the Control Agreements, the Copyright Security Agreement, any Borrowing Base Certificate, the Fee Letter, the Guaranty and Security Agreement, the Intercreditor Agreement, any Issuer Documents, the Letters of Credit, the Loan Manager Side Letter, any Mortgages, the Patent Security Agreement, the Perfection Certificate, the Trademark Security Agreement, any note or notes executed by Borrowers in connection with this Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by any Loan Party or any of its Subsidiaries and any member of the Lender Group in connection with this Agreement (but specifically excluding Bank Product Agreements).

"Loan Manager Service" means Lender's proprietary automated loan management program that may from time to time be entered into between a Borrower at such time and Lender.

"Loan Manager Side Letter" means that certain letter agreement between the Borrowers and Wells Fargo regarding the terms under which Wells Fargo will provide services to the Borrowers in respect of Wells Fargo's proprietary automated loan management program.

"Loan Party" means any Borrower or any Guarantor.

"Margin Stock" as defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Effect" means (a) a material adverse effect in the business, operations, results of operations, assets, liabilities or financial condition of the Borrowers and their Restricted Subsidiaries, taken as a whole, (b) a material impairment of the Borrowers' and their Restricted Subsidiaries' ability to perform their obligations under the Loan Documents to which they are parties or of the Lender Group's ability, taken as a whole, to enforce the Obligations or realize upon the ABL Facility Priority Lien Collateral (other than as a result of as a result of an action taken or not taken that is solely in the control of Agent), or (c) a material impairment of the enforceability or priority of Agent's Liens with respect to all or a material portion of the ABL Facility Priority Lien Collateral as a result of an action or failure to act on the part of any Loan Party.

"Maturity Date" means May 7, 2024.

"Maximum Revolver Amount" means $15,000,000, decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) of this Agreement.

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by a Loan Party in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Multiemployer Plan" means any multiemployer plan within the meaning of Section 3(37) or 4001(a)(3) of ERISA with respect to which any Borrower, Restricted Subsidiary

or ERISA Affiliate has an obligation to contribute or has any liability, contingent or otherwise or could be assessed withdrawal liability assuming a complete withdrawal from any such multiemployer plan.

"Net Cash Proceeds" means, with respect to any sale or disposition by any Borrower or any of its Restricted Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Borrower or such Restricted Subsidiary, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under this Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) reasonable fees, commissions, and expenses related thereto and required to be paid by such Borrower or such Restricted Subsidiary in connection with such sale or disposition, (iii) taxes paid or payable to any taxing authorities by such Borrower or such Restricted Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Borrower or any of its Restricted Subsidiaries, and are properly attributable to such transaction, and (iv) all amounts that are set aside as a reserve (A) for adjustments in respect of the purchase price of such assets, (B) for any liabilities associated with such sale or casualty, to the extent such reserve is required by GAAP, and (C) for the payment of unassumed liabilities relating to the assets sold or otherwise disposed of at the time of, or within 30 days after, the date of such sale or other disposition, to the extent that in each case the funds described above in this clause (iv) are (x) deposited into escrow with a third party escrow agent or set aside in a separate Deposit Account that is subject to a Control Agreement in favor of Agent, and (y) paid to Agent as a prepayment of the applicable Obligations in accordance with Section 2.4(e) of this Agreement at such time when such amounts are no longer required to be set aside as such a reserve.

"Net Income" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"Net Recovery Percentage" means, as of any date of determination, the percentage of the book value of Borrowers' Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be determined as to each category of Inventory and to be as specified in the most recent Acceptable Appraisal of Inventory.

"Non-Consenting Lender" has the meaning specified therefor in Section 14.2(a) of this Agreement.

"Non-Defaulting Lender" means each Lender other than a Defaulting Lender.

"Notification Event" means (a) the occurrence of a "reportable event" described in Section 4043 of ERISA for which the 30-day notice requirement has not been waived by applicable regulations issued by the PBGC, (b) the withdrawal of any Borrower, Restricted Subsidiary or ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer"

as defined in Section 4001(a)(2) of ERISA, (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, (e) any other event or condition that would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (f) the imposition of a Lien pursuant to the IRC or ERISA in connection with any Employee Benefit Plan or Pension Plan, or the existence of any facts or circumstances that could reasonably be expected to result in the imposition of such a Lien, (g) the partial or complete withdrawal of any Borrower, Restricted Subsidiary or ERISA Affiliate from a Multiemployer Plan, (h) the insolvency of a Multiemployer Plan under Sections of ERISA, (i) the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by the PBGC of proceedings to terminate or to appoint a trustee to administer a Multiemployer Plan under ERISA, (j) any Pension Plan being in "at risk status" within the meaning of IRC Section 430(i), (k) any Multiemployer Plan being in "endangered status" or "critical status" within the meaning of IRC Section 432(b), (l) with respect to any Pension Plan, any Borrower, Restricted Subsidiary or ERISA Affiliate incurring a substantial cessation of operations within the meaning of ERISA Section 4062(e), (m) an "accumulated funding deficiency" within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) or the failure of any Pension Plan to meet the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA), in each case, whether or not waived, (n) the filing of an application for a waiver of the minimum funding standards within the meaning of the IRC or ERISA (including Section 412 of the IRC or Section 302 of ERISA) with respect to any Pension Plan, (o) the failure to make by its due date a required payment or contribution with respect to any Pension Plan or Multiemployer Plan, or (p) any event that results in or could reasonably be expected to result in a liability by a Borrower or Restricted Subsidiary pursuant to Title I of ERISA or the excise tax provisions of the IRC relating to Employee Benefit Plans or any event that results in or could reasonably be expected to result in a liability to any Borrower, Restricted Subsidiary or ERISA Affiliate pursuant to Title IV of ERISA or Section 401(a)(29) of the IRC (other than for contributions due to any Pension Plan).

"Obligations" means (a) all loans (including the Revolving Loans (inclusive of Extraordinary Advances and Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to this Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party arising out of, under, pursuant to, in connection with, or evidenced by this Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Loan Party is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents

(other than Bank Product Obligations), and (b) all Bank Product Obligations; provided that, anything to the contrary contained in the foregoing notwithstanding, the Obligations shall exclude any Excluded Swap Obligation. Without limiting the generality of the foregoing, the Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Revolving Loans, (ii) interest accrued on the Revolving Loans, (iii) the amount necessary to reimburse Issuing Bank for amounts paid or payable pursuant to Letters of Credit, (iv) Letter of Credit commissions, fees (including fronting fees) and charges, (v) Lender Group Expenses, (vi) fees payable under this Agreement or any of the other Loan Documents, and (vii) indemnities and other amounts payable by any Loan Party under any Loan Document. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

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

"Officer" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the applicable Borrower.

"Officer's Certificate" means a certificate signed on behalf of the applicable Borrower by an Officer of such Borrower which meets the requirements set forth in this Agreement and is delivered to Agent.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Other Connection Taxes" means, with respect to any Lender or Agent, Taxes imposed as a result of a present or former connection between such recipient and the jurisdiction imposing such Tax (other than connections arising solely from (and that would not have existed but for) such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to or enforced any Loan Document).

"Other Taxes" means all present or future stamp, court, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, but not including (for the avoidance of doubt) Excluded Taxes and Taxes that are Other Connection Taxes imposed with respect to an assignment by a Lender after the date hereof (other than any assignment made at the request of any Loan Party or during an Event of Default described in Section 8.1(b), 8.4 or 8.5).

"Overadvance" means, as of any date of determination, that the Revolver Usage is greater than any of the limitations set forth in Section 2.1 or Section 2.11 of this Agreement.

"Parent" means Party City Holdco Inc., a Delaware corporation.

"Participant" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Participant Register" has the meaning set forth in Section 13.1(i) of this Agreement.

"Patent Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.13 of this Agreement.

"Payment Conditions" means, at the time of determination with respect to a proposed payment to fund a Specified Transaction, that:

(a) no Default or Event of Default then exists or would arise as a result of the consummation of such Specified Transaction;

(b) 90-Day Excess Availability and Excess Availability on the date of the proposed transaction (in each case, calculated on a *pro forma* basis to include the borrowing of any Revolving Loans and Swingline Loans, and issuance of any Letters of Credit in connection with the Specified Transaction) are each equal to or greater than 20% of the Maximum Revolver Amount at such time;

(c) the Fixed Charge Coverage Ratio of the Borrowers and their Restricted Subsidiaries is equal to or greater than 1.10:1.00 for the trailing 12 month period most recently ended for which financial statements are required to have been delivered to Agent pursuant to Schedule 5.1 to this Agreement (calculated on a *pro forma* basis as if such proposed payment is a Fixed Charge made on the last day of such 12 month period (it being understood that such proposed payment shall also be a Fixed Charge made on the last day of such 12 month period for purposes of calculating the Fixed Charge Coverage Ratio under this clause (ii) for any subsequent proposed payment to fund a Specific Transaction)); provided that if 90-Day Excess Availability and Excess Availability (in each case calculated on a *pro forma* basis to include the borrowing of any Revolving Loans and Swingline Loans, and the issuance of any Letters of Credit in connection with the proposed transaction) is greater than or equal to 22.5% of the Maximum Revolver Amount at such time, then this clause (c) shall not apply; and

(d) Administrative Borrower has delivered a an Officer's Certificate to Agent certifying that the conditions described in clauses (a) through (d) (if applicable) above have been satisfied.

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

"Pension Plan" means any pension benefit plan (within the meaning of Section 3(3) of ERISA), other than a Multiemployer Plan, which is subject to the provisions of Title IV or Section 302 of ERISA or Sections 412 or 430 of the Code sponsored, maintained, or contributed to by any Borrower, Restricted Subsidiary or ERISA Affiliate or to which any Borrower, Restricted Subsidiary or ERISA Affiliate has any liability, contingent or otherwise at any time within the preceding six years.

"Perfection Certificate" means a certificate in the form of Exhibit P-1 to this Agreement (or in such other form as is mutually agreed by Administrative Borrower and Agent).

"Permitted Acquisition" means any Acquisition so long as:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition and the proposed Acquisition is consensual;

(b) no Indebtedness will be incurred, assumed, or would exist with respect to any Borrower or Restricted Subsidiary as a result of such Acquisition, other than Indebtedness permitted under Section 6.1 and no Liens will be incurred, assumed, or would exist with respect to the assets of any Borrower or Restricted Subsidiary as a result of such Acquisition other than Permitted Liens;

(c) Borrowers have provided Agent with written confirmation, supported by reasonably detailed calculations, that on a *pro forma* basis (including *pro forma* adjustments arising out of events which are directly attributable to such proposed Acquisition, are factually supportable, and are expected to have a continuing impact, in each case, determined as if the combination had been accomplished at the beginning of the relevant period; such eliminations and inclusions to be mutually and reasonably agreed upon by Borrowers and Agent) created by adding the historical combined financial statements of Borrowers (including the combined financial statements of any other Person or assets that were the subject of a prior Permitted Acquisition during the relevant period) to the historical consolidated financial statements of the Person to be acquired (or the historical financial statements related to the assets to be acquired) pursuant to the proposed Acquisition, the Borrowers and their Restricted Subsidiaries (i) would have been in compliance with the financial covenant(s) in Section 7 of this Agreement for the fiscal month ended immediately prior to the proposed date of consummation of such proposed Acquisition regardless of whether such financial covenant(s) are required to be tested for such fiscal month, and (ii) are projected to be in compliance with the financial covenant(s) in Section 7 of this Agreement for each of the twelve fiscal months in the period ended one year after the proposed date of consummation of such proposed Acquisition assuming that such financial covenant(s) will be required to be tested in each such fiscal month;

(d) with respect to each Acquisition for which the total consideration (including seller financing and earnouts) exceeds $5,000,000, Borrowers have provided Agent with their due diligence package relative to the proposed Acquisition, including forecasted balance sheets, profit and loss statements, and cash flow statements of the Person or assets to be acquired, all prepared on a basis consistent with such Person's (or assets') historical financial statements, together with appropriate supporting details and a statement of underlying assumptions for the one year period following the date of the proposed Acquisition, on a quarter by quarter basis), in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to Agent; provided, that Borrowers shall not be required to provide Agent with any information to the extent that to do so would violate contractual confidentiality restrictions binding on Borrowers;

(e) the Payment Conditions have been satisfied;

(f) the EBITDA of the assets being acquired or the Person whose Equity Interests are being acquired during the 12 consecutive month period most recently concluded prior to the date of the proposed Acquisition, when combined with the EBITDA of the Borrowers and their Restricted Subsidiaries for such period, both calculated including adjustments reasonably acceptable to Agent, is equal to or greater than zero;

(g) Borrowers have provided Agent with written notice of the proposed Acquisition at least 10 Business Days prior to the anticipated closing date of the proposed Acquisition and, not later than five Business Days prior to the anticipated closing date of the proposed Acquisition, drafts of the acquisition agreement and other material documents, to the extent they are available at such time, relative to the proposed Acquisition, which agreement and documents must be reasonably acceptable to Agent;

(h) the assets being acquired (other than a *de minimis* amount of assets in relation to Borrowers' and their Subsidiaries' total assets), or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, a Similar Business;

(i) the assets being acquired (other than a *de minimis* amount of assets in relation to the assets being acquired) are located within the United States or the Person whose Equity Interests are being acquired is organized in a jurisdiction located within the United States; and

(j) the subject assets or Equity Interests, as applicable, are being acquired directly by a Borrower or one of its Subsidiaries that is a Guarantor, and, in connection therewith, the applicable Loan Party shall have complied with Section 5.11 or 5.12 of this Agreement, as applicable, of this Agreement and, in the case of an acquisition of Equity Interests, the Person whose Equity Interests are acquired shall become a Loan Party and the applicable Loan Party shall have demonstrated to Agent that the new Loan Parties have received consideration sufficient to make the joinder documents binding and enforceable against such new Loan Parties.

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

"Permitted Holders" means (i) the "Consenting Noteholders" (as such term is defined in that certain Transaction Support Agreement of Party City Holdco Inc. dated May 28, 2020) and (ii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the Consenting Noteholders are members.

"Permitted Investment" means:

(a) any Investment in any Borrower or any Guarantor;

(b) any Investment in cash and Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(c) so long as the Payment Conditions have been satisfied, Investments by any Borrower or any of its Restricted Subsidiaries in any Person listed on Schedule P-1 hereto in an aggregate amount not to exceed $4,000,000, if as a result of such Investment:

(i) such Person becomes a Guarantor; or

(ii) such Person, in one transaction or a series of related transactions, is merged, amalgamated or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, a Borrower or a Guarantor,

and, in each case, any Investment held by such Person; provided that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(d) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to Section 6.4(a) or any other disposition of assets not constituting an Asset Sale;

(e) any Investment existing on the Closing Date and listed on Schedule P-1 hereto; provided that the amount of any such Investment may not be increased above the amount outstanding on the Closing Date unless otherwise permitted under this Agreement;

(f) any Investment acquired by any Borrower or any of its Restricted Subsidiaries:

(i) in exchange for any other Investment or Account held by any such Borrower or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent Accounts and disputes with or judgments against, the issuer of such other Investment or Accounts;

(ii) as a result of a foreclosure by any Borrower or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(iii) as a result of the settlement, compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates; or

(iv) in settlement of debts created in the ordinary course of business;

(g) Hedge Obligations permitted under Section 6.1(b)(ix);

(h) Investments the payment for which consists of Equity Interests (exclusive of Disqualified Stock) of Anagram LLC, or any of its direct or indirect parent companies;

(i) guarantees of Indebtedness of any Borrower or any Restricted Subsidiary permitted under Section 6.1, and performance guarantees that are Contingent Obligations in the ordinary course of business;

(j) Investments consisting of or to finance purchases and acquisitions of Inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of intellectual property, in each case, in the ordinary course of business;

(k) so long as the Payment Conditions have been satisfied, other Investments, taken together with all other Investments made pursuant to this clause (k), in an aggregate amount not to exceed $4,000,000 in any one year period following the Closing Date (with unused amounts carried over to subsequent one year periods); provided that any Investments made pursuant to this clause (k) (i) shall be made in the form of cash or Cash Equivalents, (ii) shall be made in a Person engaged in a Similar Business, (iii) shall not be made in connection with a restructuring or recapitalization of any Borrower or any Guarantor, and (iv) shall not be in the form of any contribution of assets (tangible or intangible) or loan to (or guarantee on behalf of) any Affiliate of any Borrower or any Guarantor;

(l) Permitted Acquisitions;

(m) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course;

(n) Investments in any Restricted Subsidiary in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(o) Investments in the ordinary course of business consisting of (x) UCC Article 3 endorsements for collection or deposit and (y) UCC Article 4 customary trade arrangements with customers that are not Affiliates of the Borrowers or any Restricted Subsidiary and otherwise consistent with past practices; and

(p) guarantees of leases (other than capital leases) or of other obligations not constituting Indebtedness in favor of Persons who are not Affiliates of any Borrower or any Restricted Subsidiary, in each case in the ordinary course of business.

"Permitted Liens" means, with respect to any Person:

(a) (i) (A) pledges, deposits or security by such Person under workmen's compensation laws, unemployment insurance, employers' health tax and other social security laws or similar legislation or regulations, health, disability or other employee benefits or property and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (B) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to any Borrower or any Subsidiary; or (ii) Liens, pledges and deposits in connection with bids, tenders, contracts (other than for Indebtedness for borrowed money) or leases, statutory obligations, surety, customs, bid and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, performance and completion guarantees and other obligations of a like nature (including letters of credit in lieu of any such items or to support the issuance thereof), in each case of clauses (i) and (ii) above, incurred in the ordinary course of business to secure health, safety and environmental

obligations and obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items described in this clause (a);

(b) Liens imposed by law, such as landlord's, carriers', warehousemen's, materialmen's, repairmen's, construction and mechanics' Liens, in each case so long as such Liens arise in the ordinary course of business and secure amounts not overdue for a period of more than 30 days or, if more than 30 days overdue either (i) such amounts are being contested in good faith by appropriate actions or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP or (ii) with respect to which the failure to make payment could not reasonably be expected to have a material adverse effect;

(c) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or, if overdue by more than 30 days, such taxes, assessments or other governmental charges (i) are subject to a Permitted Protest, or (ii) are taxes, assessments or other governmental charges with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(d) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptances issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice prior to the Closing Date;

(e) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(f) Liens existing on the Closing Date and listed on Schedule P-2 hereto;

(g) Liens securing Indebtedness permitted to be incurred pursuant to clause (xviii)(b) of Section 6.1(b) and existing on property or shares of stock of a Person at the time such Person becomes a Subsidiary in accordance with the provisions of this Agreement; provided, however, such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; provided, further, however, that such Liens may not extend to any other property owned by any Borrower or any of its Restricted Subsidiaries;

(h) Liens securing Indebtedness permitted to be incurred pursuant to clause (xviii)(b) of Section 6.1(b) and existing on property at the time any Borrower or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger, amalgamation or consolidation with or into any Borrower or any of its Restricted Subsidiaries; provided,

however, that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, merger, amalgamation or consolidation; provided, further, however, that the Liens may not extend to any other property owned by any Borrower or any of its Restricted Subsidiaries;

(i) Liens securing Indebtedness (A) permitted to be incurred pursuant to clause (iv) of Section 6.1(b); provided that such Liens do not extend to any property or assets that are not property being purchased, leased, constructed or improved with the proceeds of such Indebtedness being incurred pursuant to clause (iv) of Section 6.1(b) except that individual financings of Equipment provided by one lender may be cross-collateralized to other financings of equipment provided by such lender, and (B) in an amount not to exceed $5,000,000 at any one time outstanding;

(j) Liens securing Hedge Obligations so long as the related Indebtedness is permitted to be incurred under this Agreement;

(k) Liens on specific items of Inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances, a bank guarantee or letters of credit issued or created for the account of such Person to facilitate the purchase of such Inventory or other goods, so long as Agent is notified of each such Lien promptly after it arises;

(l) leases, subleases, licenses or sublicenses, grants or permits (including with respect to intellectual property and software) granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of any Borrower or any of its Restricted Subsidiaries and the customary rights reserved or vested in any Person by the terms of any lease, sublease, license, sublicense, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(m) Liens arising from UCC (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts in connection with any transaction otherwise permitted under this Agreement;

(n) Liens in favor of any Borrower or any Guarantor;

(o) Liens on Equipment of any Borrower or any of its Restricted Subsidiaries granted in the ordinary course of business to such Borrower's clients that are not Affiliates of any Borrower or any Restricted Subsidiary;

(p) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clauses (f), (g), (h), and this clause (p) hereof; provided, however, that (i) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and proceeds and products thereof, (ii) such new Lien shall have the same Lien priorities as the prior Lien, and (c) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (f), (g), (h) and this clause (p) hereof at the time the original

Lien became a Permitted Lien under this Agreement, and (ii) an amount necessary to pay any fees (including original issue discount, upfront fees or similar fees) and expenses, including premiums (including tender premiums and accrued and unpaid interest (including pay in kind interest, if any)), penalties or similar amounts, related to such modification, refinancing, refunding, extension, renewal or replacement;

(q) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;

(r) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.3 so long as such Liens are adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(s) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(t) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(u) Liens deemed to exist in connection with Investments in repurchase agreements or other Cash Equivalents permitted under Section 6.1; provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement or other Cash Equivalent;

(v) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(w) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations in the ordinary course of business with banks and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of any Borrower or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of any Borrower and its Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of any Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(x) Liens solely on any cash earnest money deposits made by any Borrower or any of its Restricted Subsidiaries in connection with any letter of intent or purchase agreement related to a Permitted Acquisition or other Permitted Investment;

(y) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by any Borrower or any of its Restricted Subsidiaries or by a

statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(z) restrictive covenants affecting the use to which Real Property may be put entered into in the ordinary course of business; provided, however, that the covenants are complied with;

(aa) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(bb) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements;

(cc) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by any Borrower or any Restricted Subsidiary in the ordinary course of business;

(dd) (i) customary transfer restrictions and purchase options in joint venture and similar agreements permitted under this Agreement, (ii) Liens on Equity Interests in joint ventures securing obligations of such joint ventures permitted under this Agreement and (iii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements entered into in the ordinary course of business and permitted under this Agreement, including, without limitation, in all such cases pursuant to clauses (i) through (iii), with respect to Convergram de Mexico S. de R.L.;

(ee) (i) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business, (ii) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business and (iii) Liens arising by operation of law under Article 2 of the UCC;

(ff) Liens securing (i) the First Lien Indebtedness, so long as such Liens are subject to the Intercreditor Agreement and (ii) the Second Lien Indebtedness, so long as such Liens are subject to the Intercreditor Agreement;

(gg) Liens securing the Obligations, so long as such Liens are subject to the Intercreditor Agreement;

(hh) Liens on cash and Cash Equivalents that are earmarked to be used to defease, redeem, satisfy or discharge Indebtedness; provided (a) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be defeased, redeemed, satisfied or discharged, (b) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be defeased, redeemed, satisfied or discharged, and (c) the defeasance, redemption, satisfaction or discharge of such Indebtedness is expressly permitted under this Agreement; and

(ii) Liens securing Indebtedness incurred pursuant to Section 6.1(b)(xvi) or any Refinancing Indebtedness in respect thereof in connection with a Sale and Lease-Back Transaction.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"Permitted Protest" means the right of any Borrower or any of its Restricted Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that (a) a reserve with respect to such obligation is established on such Borrower's or its Restricted Subsidiaries' books and records in such amount as is required under GAAP, and (b) any such protest is instituted promptly and prosecuted diligently by such Borrower or its Restricted Subsidiary, as applicable, in good faith.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Platform" has the meaning specified therefor in Section 17.9(c) of this Agreement.

"Preferred Stock" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's obligation to make all or a portion of the Revolving Loans, with respect to such Lender's right to receive payments of interest, fees, and principal with respect to the Revolving Loans, and with respect to all other computations and other matters related to the Revolver Commitments or the Revolving Loans, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders,

(b) with respect to a Lender's obligation to participate in the Letters of Credit, with respect to such Lender's obligation to reimburse Issuing Bank, and with respect to such Lender's right to receive payments of Letter of Credit Fees, and with respect to all other computations and other matters related to the Letters of Credit, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders; provided, that if all of the Revolving Loans have been repaid in full and all Revolver Commitments have been terminated, but Letters of Credit remain outstanding, Pro Rata Share under this clause shall be the percentage obtained by dividing (A) the Letter of Credit Exposure of such Lender, by (B) the Letter of Credit Exposure of all Lenders, and

(c) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of this Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender, by (ii) the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage

may be adjusted by assignments permitted pursuant to Section 13.1; provided, that if all of the Loans have been repaid in full and all Commitments have been terminated, Pro Rata Share under this clause shall be the percentage obtained by dividing (A) the Letter of Credit Exposure of such Lender, by (B) the Letter of Credit Exposure of all Lenders.

"Projections" means Borrowers' forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Borrowers' historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Protective Advances" has the meaning specified therefor in Section 2.3(d)(i) of this Agreement.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. § 5390(c)(8)(D).

"QFC Credit Support" has the meaning specified therefor in Section 17.15 of this Agreement.

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Stock and any warrants, rights or options to purchase or acquire Capital Stock that is not Disqualified Stock and that are not convertible into or exchangeable into Disqualified Stock; provided that such Capital Stock shall not be deemed Qualified Capital Stock to the extent financed, directly or indirectly, using funds borrowed from such Person or any Subsidiary of such Person until and to the extent such borrowing is repaid.

"Rating Agencies" means Moody's and S&P or if Moody's or S&P or both shall not make a rating publicly available, a nationally recognized statistical rating agency or agencies, as the case may be.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by any Loan Party or one of its Subsidiaries and the improvements thereto.

"Real Property Collateral" means (a) the Real Property identified on Schedule R-1 to this Agreement, and (b) any Real Property hereafter acquired by any Loan Party with a fair market value in excess of $1,000,000.

"Receivable Reserves" means, as of any date of determination, those reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including Dilution Reserves and Landlord Reserves for books and records locations and reserves for rebates, discounts, warranty claims, and returns) with respect to the Eligible Accounts or the Maximum Revolver Amount.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Refinancing Indebtedness" has the meaning set forth in Section 6.1(b)(xi).

"Register" has the meaning set forth in Section 13.1(h) of this Agreement.

"Registered Loan" has the meaning set forth in Section 13.1(h) of this Agreement.

"Related Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course and that is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"Relevant Governmental Body" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"Remedial Action" means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, or investigate Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of this Agreement.

"Report" has the meaning specified therefor in Section 15.16 of this Agreement.

"Required Availability" means that Excess Availability exceeds $8,000,000.

"Required Lenders" means, at any time, Lenders having or holding more than 50% of the aggregate Revolving Loan Exposure of all Lenders; provided, that (i) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Required Lenders, and (ii) at any time there are two or more Lenders (who are not Affiliates of one another or Defaulting Lenders), "Required Lenders" must include at least two Lenders (who are not Affiliates of one another).

"Reserves" means, as of any date of determination, Inventory Reserves, Receivables Reserves, Bank Product Reserves and those other reserves that Agent deems necessary or appropriate, in its Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves with respect to (a) sums that any Loan Party are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, and (b) amounts owing by any Loan Party to any Person to the extent secured by a Lien on, or trust over, any of the ABL Facility Priority Lien Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or

other taxes where given priority under applicable law) in and to such item of the ABL Facility Priority Lien Collateral) with respect to the Borrowing Base or the Maximum Revolver Amount.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Investment" means an Investment other than a Permitted Investment.

"Restricted Payment" has the meaning specified therefor in Section 6.2.

"Restricted Subsidiary" means, at any time, any direct or indirect Subsidiary of Anagram LLC.

"Revolver Commitment" means, with respect to each Revolving Lender, its Revolver Commitment, and, with respect to all Revolving Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Revolving Lender's name under the applicable heading on Schedule C-1 to this Agreement or in the Assignment and Acceptance pursuant to which such Revolving Lender became a Revolving Lender under this Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of this Agreement, and as such amounts may be decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) hereof.

"Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Revolving Loans (inclusive of Swing Loans and Protective Advances), *plus* (b) the amount of the Letter of Credit Usage.

"Revolving Lender" means a Lender that has a Revolving Loan Exposure or Letter of Credit Exposure.

"Revolving Loan Exposure" means, with respect to any Revolving Lender, as of any date of determination (a) prior to the termination of the Revolver Commitments, the amount of such Lender's Revolver Commitment, and (b) after the termination of the Revolver Commitments, the aggregate outstanding principal amount of the Revolving Loans of such Lender.

"Revolving Loans" has the meaning specified therefor in Section 2.1(a) of this Agreement.

"S&P" means S&P Global Ratings and any successor to its rating agency business.

"Sale and Lease-Back Transaction" means any arrangement providing for the leasing by any Borrower or any of its Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by such Borrowers or such Restricted Subsidiary to a third Person in contemplation of such leasing to which funds have been or are to be advanced by such third Person on the security of the leased property; provided that in connection with any Sale and Lease-Back Transaction, such Borrower or such Restricted Subsidiary shall have received cash proceeds in an amount equal to or greater than the Fair Market Value of such property so sold or transferred on terms at least as favorable to such Borrower or

such Restricted Subsidiary as could be obtained on an arm's length basis from a non-Affiliate, as reasonably determined by the Board of Directors of Anagram LLC in good faith.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of comprehensive Sanctions, including a target of any comprehensive country sanctions program administered and enforced by OFAC.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority, (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned 50% or more or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority with jurisdiction over any member of Lender Group or any Borrower or any of their respective Restricted Subsidiaries or Affiliates.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Second Lien Collateral Trustee" means Ankura Trust Company, LLC, as collateral trustee under the Second Lien Indenture, and its successors in such capacity.

"Second Lien Documents" means, collectively, the Second Lien Indenture, the Second Lien Notes and the other agreements, instruments and documents evidencing or securing the Second Lien Indebtedness.

"Second Lien Indebtedness" means the Indebtedness of the Borrowers and the Guarantors under the Second Lien Documents.

"Second Lien Indenture" means that certain Indenture, dated as of July 30, 2020, by and among the Borrowers, the guarantors party thereto, Second Lien Trustee and Second Lien Collateral Trustee, with respect to the Borrowers' 10.00% PIK/Cash Senior Secured Second Lien Notes due 2026, as amended, restated, amended and restated, supplemented or otherwise modified from time to time as permitted pursuant to the Intercreditor Agreement.

"Second Lien Notes" means, collectively, the securities issued pursuant to the Second Lien Indenture.

"Second Lien Trustee" means Ankura Trust Company, LLC, as trustee under the Second Lien Indenture, and its successors in such capacity.

"Secured Indebtedness" means any Indebtedness of any Borrower or any of its Restricted Subsidiaries, as applicable, secured by a Lien.

"Securities Account" means a securities account (as that term is defined in the Code).

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Settlement" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.3(e)(i) of this Agreement.

"Similar Business" means any business conducted by the Borrowers and their Restricted Subsidiaries on the Closing Date or any business that is a reasonable extension, development or expansion of any of the foregoing or is similar, reasonably related, incidental or ancillary thereto (including, for the avoidance of doubt, any sourcing companies created in connection with any of the foregoing).

"SOFR" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"Solvent" means, with respect to any Person as of any date of determination, that (a) at fair valuations, the sum of such Person's debts (including contingent liabilities) is less than all of such Person's assets, (b) such Person is not engaged or about to engage in a business or transaction for which the remaining assets of such Person are unreasonably small in relation to the business or transaction or for which the property remaining with such Person is an unreasonably small capital, (c) such Person has not incurred and does not intend to incur, or reasonably believe that it will incur, debts beyond its ability to pay such debts as they become due (whether at maturity or otherwise), and (d) such Person is "solvent" or not "insolvent", as applicable within the meaning given those terms and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Specified Event of Default" means an Event of Default under Section 8.1, Section 8.2(a)(iii) (solely as a result of a breach of Section 7(a)), Section 8.2(c), Section 8.4 or Section 8.5.

"Specified Transaction" means, any Permitted Acquisition, other Investment, prepayment of Indebtedness or Restricted Payment (or declaration of any prepayment or Restricted Payment).

"Standard Letter of Credit Practice" means, for Issuing Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under ISP or UCP, as chosen in the applicable Letter of Credit.

"Subordinated Indebtedness" means, with respect to the Obligations,

(a) any Indebtedness of any Borrower which is by its terms subordinated in right of payment to the Obligations, and

(b) any Indebtedness of any Guarantor which is by its terms subordinated in right of payment to the guarantee of such entity of the Obligations.

"Subsidiary" means, with respect to any Person:

(a) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(b) any partnership, joint venture, limited liability company or similar entity of which

(i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(ii) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"Supermajority Lenders" means, at any time, Revolving Lenders having or holding more than 66 2/3% of the aggregate Revolving Loan Exposure of all Revolving Lenders; provided, that (i) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Supermajority Lenders, and (ii) at any time there are two or more Revolving Lenders (who are not Affiliates of one another), "Supermajority Lenders" must include at least two Revolving Lenders (who are not Affiliates of one another or Defaulting Lenders).

"Supported QFC" has the meaning specified therefor in Section 17.15 of this Agreement.

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

"Swing Lender" means Wells Fargo or any other Lender that, at the request of Borrowers and with the reasonable consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.3(b) of this Agreement.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of this Agreement.

"Swing Loan Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Swing Loans on such date.

"Taxes" means any and all present and future taxes, levies, imposts, duties, deductions, fees, assessments, withholdings (including backup withholding) or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein, and all interest, penalties or similar liabilities with respect thereto.

"Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Trademark Security Agreement" has the meaning specified therefor in the Guaranty and Security Agreement.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any version or revision thereof accepted by Issuing Bank for use.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investments firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

"United States" means the United States of America.

"Unrestricted Cash" means, as of any date of determination, with respect to the Borrowers and their Subsidiaries on a consolidated basis, all cash and Cash Equivalents of such Persons, as of the date of such determination (i) that is not pledged as performance collateral or bid bond collateral, (ii) that is not deposited in any account that is blocked and not accessible to any Borrower or any of its Subsidiaries following the occurrence of an event of default or other enforcement action under any financing or security document to which any Borrower or such Subsidiary is a party (other than pursuant to the Loan Documents), and (iii) that would not be designated as "restricted" on a consolidated balance sheet in accordance with GAAP.

"Unused Line Fee" has the meaning specified therefor in Section 2.10(b) of this Agreement.

"U.S. Special Resolution Regimes" has the meaning specified therefor in Section 17.15 of this Agreement.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of this Agreement.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

(a) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment; by

(b) the sum of all such payments;

provided, that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being extended, replaced, refunded, refinanced, renewed or defeased (the "Applicable Indebtedness"), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable extension, replacement, refunding, refinancing, renewal or defeasance shall be disregarded.

"Wells Fargo" has the meaning specified therefor in the preamble to this Agreement.

"Wholly-Owned Subsidiary" of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares and shares issued to foreign nationals as required under applicable law) shall at the time be directly or indirectly owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

"Withdrawal Liability" means liability with respect to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.2. **Accounting Terms**. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions immediately before such Accounting Change took effect and, until any such amendments have been reasonably agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Notwithstanding any changes in GAAP after the Closing Date, any lease of the Borrowers or their Subsidiaries that would be characterized as an operating lease under GAAP in effect on the Closing Date (whether such lease is entered into before or after the Closing Date) shall not constitute a capital lease under this Agreement or any other Loan Document as a result of such changes in GAAP unless otherwise agreed to in writing by the Borrowers and Required Lenders. Whenever the term "Borrowers" is used in respect of a financial covenant or a related definition, it shall be understood to mean the Borrowers and their Restricted Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards Board's Accounting Standards Codification Topic 825 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit.

1.3. **Code**. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4. **Construction**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, and (iii) all fees or charges that have accrued hereunder or under any other Loan Document (including the Letter of Credit Fee and the Unused Line Fee) and are unpaid, (b) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns.

Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Time References**. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Central standard time or Central daylight saving time, as in effect in Minneapolis, Minnesota on such day. For purposes of the computation of a period of time from a specified date to a later specified date, unless otherwise expressly provided, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided, that with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

1.6. **Schedules and Exhibits**. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

1.7. **Divisions**. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

2. LOANS AND TERMS OF PAYMENT.

2.1. **Revolving Loans**.

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Revolving Lender agrees (severally, not jointly or jointly and severally) to make revolving loans ("Revolving Loans") to Borrowers in an amount at any one time outstanding not to exceed *the lesser of*:

(i) such Lender's Revolver Commitment, or

(ii) such Lender's Pro Rata Share of an amount equal to the lesser of:

(A) the amount equal to (1) the Maximum Revolver Amount, *less* (2) the sum of (y) the Letter of Credit Usage at such time, *plus* (z) the principal amount of Swing Loans outstanding at such time, and

(B) the amount equal to (1) the Borrowing Base as of such date (based upon the most recent Borrowing Base Certificate delivered by Borrowers to Agent, as adjusted for Reserves established by Agent in accordance with Section 2.1(c)), *less* (2) the sum of (x) the Letter of Credit Usage at such time, *plus* (y) the principal amount of Swing Loans outstanding at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this

Agreement. The outstanding principal amount of the Revolving Loans, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date or, if earlier, on the date on which they otherwise become due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation) at any time, in the exercise of its Permitted Discretion, to establish and increase or decrease Reserves against the Borrowing Base or the Maximum Revolver Amount. The amount of any Reserve established by Agent, and any changes to the eligibility criteria in the manner set forth in the definitions of Eligible Accounts and Eligible Inventory shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve or change in eligibility criteria and shall not be duplicative of any other reserve established and currently maintained or eligibility criteria.

2.2. **[Reserved]**.

2.3. **Borrowing Procedures and Settlements**.

(a) **Procedure for Borrowing Revolving Loans**. Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent (which may be delivered through Agent's electronic platform or portal) and received by Agent no later than 11:00 a.m. (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) on the Business Day that is one Business Day prior to the requested Funding Date in the case of a request for a Base Rate Loan, and (iii) on the Business Day that is three Business Days (or, in the case of a Borrowing on the Closing Date, if any, one Business Day) prior to the requested Funding Date in the case of all other requests, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 11:00 a.m. on the applicable Business Day. All Borrowing requests which are not made on-line via Agent's electronic platform or portal or pursuant to the Loan Manager Service shall be subject to (and unless Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) Agent's authentication process (with results satisfactory to Agent) prior to the funding of any such requested Revolving Loan. If Agent has separately agreed that a Borrower may use the Loan Manager Service, Revolving Loans (i) will be made solely by the Loan Manager Service, and (ii) will be initiated by Agent and credited to a Borrower's operating account maintained with Agent as Revolving Loans as of the end of each Business Day in an amount sufficient to maintain an agreed upon ledger balance in such Borrower's operating account maintained with Agent, subject to Excess Availability. Agent may terminate a Borrower's access to the Loan Manager Service at any time in its discretion. If Agent terminates a Borrower's access to the Loan Manager Service, each Borrower may continue to request Revolving Loans as provided herein so long as no Event of Default exists. Agent will have no obligation to make a Revolving Loan through the Loan Manager Service in an amount in excess of Excess Availability or if an Event of Default exists or any of the other conditions set forth in Section 3.2 are not satisfied.

(b) **Making of Swing Loans**. In the case of a Revolving Loan and so long as any of (i) the aggregate amount of Swing Loans made since the last Settlement Date, *minus* all payments or other amounts applied to Swing Loans since the last Settlement Date, *plus* the amount

of the requested Swing Loan does not exceed $1,500,000, or (ii) Swing Lender, in its sole discretion, agrees to make a Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make a Revolving Loan (any such Revolving Loan made by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and all such Revolving Loans being referred to as "Swing Loans") available to Borrowers on the Funding Date applicable thereto by transferring immediately available funds in the amount of such Borrowing to the Designated Account. Each Swing Loan shall be deemed to be a Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Revolving Loans, except that all payments (including interest) on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Revolving Loans and Obligations, and bear interest at the Applicable Rate.

(c) **Making of Revolving Loans**.

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then after receipt of a request for a Borrowing pursuant to Section 2.3(a)(i), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day that is (A) in the case of a Base Rate Loan, at least one Business Day prior to the requested Funding Date, or (B) in the case of a LIBOR Rate Loan, prior to 11:00 a.m. at least three Business Days prior to the requested Funding Date. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is one Business Day prior to the Funding Date, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Revolving Loans from the Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, that subject to the provisions of Section 2.3(d)(ii), no Lender shall have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:30 a.m. on the Business Day that is the requested Funding Date relative to a requested Borrowing as to which Agent has notified the Lenders of a requested Borrowing that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers a

corresponding amount. If, on the requested Funding Date, any Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, no later than 10:00 a.m. on the Business Day that is the first Business Day after the requested Funding Date (in which case, the interest accrued on such Lender's portion of such Borrowing for the Funding Date shall be for Agent's separate account). If any Lender shall not remit the full amount that it is required to make available to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that Lender shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If the amount that a Lender is required to remit is made available to Agent, then such payment to Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate *per annum* equal to the Applicable Rate.

(d) **Protective Advances and Optional Overadvances**.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding (but subject to Section 2.3(d)(iv)), at any time (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make Revolving Loans to, or for the benefit of, Borrowers, on behalf of the Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the ABL Facility Priority Lien Collateral, or any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances").

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby, so long as (A) after giving effect to such Revolving Loans, the outstanding Revolver Usage does not exceed the Borrowing Base by more than 10% of the Borrowing Base, and (B) subject to Section 2.3(d)(iv) below, after giving effect to such Revolving Loans, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by this Section 2.3(d), regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding

amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent reasonably determines that prior notice would result in imminent harm to the ABL Facility Priority Lien Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.4(e)(1).

(iii) Each Protective Advance and each Overadvance (each, an "Extraordinary Advance") shall be deemed to be a Revolving Loan hereunder, except that no Extraordinary Advance shall be eligible to be a LIBOR Rate Loan. Prior to Settlement of any Extraordinary Advance, all payments with respect thereto, including interest thereon, shall be payable to Agent solely for its own account. Each Revolving Lender shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any Extraordinary Advance. The Extraordinary Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the Applicable Rate. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(iv) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, no Extraordinary Advance may be made by Agent if such Extraordinary Advance would cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or any Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments; provided that Agent may make Extraordinary Advances in excess of the foregoing limitations so long as such Extraordinary Advances that cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or a Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments are for Agent's sole and separate account and not for the account of any Lender. No Lender shall have an obligation to settle with Agent for such Extraordinary Advances that cause the aggregate Revolver Usage to exceed the Maximum Revolver Amount or a Lender's Pro Rata Share of the Revolver Usage to exceed such Lender's Revolver Commitments as provided in Section 2.3(e) (or Section 2.3(g), as applicable).

(e) **Settlement**. It is agreed that each Lender's funded portion of the Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Revolving Loans. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Revolving Loans (including Swing Loans and Extraordinary Advances) shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent in its sole discretion (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Extraordinary Advances, and (3) with respect to any Loan Party's payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Revolving Loans (including Swing Loans and Extraordinary Advances) for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances), and (z) if the amount of the Revolving Loans (including Swing Loans and Extraordinary Advances) made by a Lender is less than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Extraordinary Advances and, together with the portion of such Swing Loans or Extraordinary Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Revolving Loans (including Swing Loans and Extraordinary Advances) is less than, equal to, or greater than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances) as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Extraordinary Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Extraordinary Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Extraordinary Advances or Swing Loans are outstanding, may pay over to Swing Lender any payments or other amounts received by Agent, that in accordance with the terms of this Agreement

would be applied to the reduction of the Revolving Loans, for application to Swing Lender's Pro Rata Share of the Revolving Loans. If, as of any Settlement Date, payments or other amounts of the Loan Parties received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Revolving Loans other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Extraordinary Advances, and each Lender with respect to the Revolving Loans other than Swing Loans and Extraordinary Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation**. Consistent with Section 13.1(h), Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount and stated interest of the Revolving Loans, owing to each Lender, including the Swing Loans owing to Swing Lender, and Extraordinary Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders**.

(i) Notwithstanding the provisions of Section 2.4(b)(iii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Agent to the extent of any Extraordinary Advances that were made by Agent and that were required to be, but were not, paid by Defaulting Lender, (B) second, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, paid by the Defaulting Lender, (C) third, to Issuing Bank, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (D) fourth, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Revolving Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (E) fifth, in Agent's sole discretion, to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrowers (upon the request of Borrowers and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Revolving Loans (or other funding obligations) hereunder, and (F) sixth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (L) of Section 2.4(b)(iii). Subject to the foregoing, Agent may hold and, in its discretion, re-lend to

Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, Issuing Bank, and Borrowers shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(g)(ii) shall be released to Borrowers). The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by any Borrower of its duties and obligations hereunder to Agent, Issuing Bank, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(ii) If any Swing Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(A) such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (x) the sum of all Non-Defaulting Lenders' Pro Rata Share of Revolver Usage *plus* such Defaulting Lender's Swing Loan Exposure and Letter

of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Revolver Commitments and (y) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by Agent to Administrative Borrower (x) first, prepay such Defaulting Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), and (y) second, cash collateralize such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Borrowers shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also Issuing Bank;

(C) if Borrowers cash collateralize any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 2.3(g)(ii), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.6(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Letter of Credit Exposure;

(E) to the extent any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(g)(ii), then, without prejudice to any rights or remedies of Issuing Bank or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to Issuing Bank until such portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Lender is a Defaulting Lender, the Swing Lender shall not be required to make any Swing Loan and Issuing Bank shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Pro Rata Share of such Swing Loans or Letter of Credit cannot be reallocated pursuant to this Section 2.3(g)(ii), or (y) the Swing Lender or Issuing Bank, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Lender or Issuing Bank, as applicable, and Borrowers to eliminate the Swing Lender's or Issuing Bank's risk with respect to the Defaulting Lender's participation in Swing Loans or Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrowers pursuant to this Section 2.3(g)(ii) to Issuing Bank and Issuing Bank may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrowers pursuant to Section 2.11(d). Subject to Section 17.14, no reallocation hereunder shall constitute a waiver or release of any claim of any party

hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(h) **Independent Obligations**. All Revolving Loans (other than Swing Loans and Extraordinary Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4. **Payments; Reductions of Commitments; Prepayments**.

(a) **Payments by Borrowers**.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 1:30 p.m. on the date specified herein; provided that, for the avoidance of doubt, any payments deposited into a Deposit Account subject to a Control Agreement shall be deemed not to be received by Agent on any Business Day unless immediately available funds have been credited to Agent's Account prior to 1:30 p.m. on such Business Day. Any payment received by Agent in immediately available funds in Agent's Account later than 1:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrowers prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender (less any applicable withholding). If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application**.

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of Issuing Bank) shall be apportioned ratably

among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates.

(ii) Subject to Section 2.4(b)(v), Section 2.4(d)(ii), Section 2.4(e) and the Intercreditor Agreement, all payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, to reduce the balance of the Revolving Loans outstanding and, thereafter, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents and to pay interest and principal on Extraordinary Advances that are held solely by Agent pursuant to the terms of Section 2.4(d)(iv), until paid in full,

(B) second, to pay any fees or premiums then due to Agent under the Loan Documents, until paid in full,

(C) third, to pay interest due in respect of all Protective Advances, until paid in full,

(D) fourth, to pay the principal of all Protective Advances, until paid in full,

(E) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(F) sixth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents, until paid in full,

(G) seventh, to pay interest accrued in respect of the Swing Loans, until paid in full,

(H) eighth, to pay the principal of all Swing Loans, until paid in full,

(I) ninth, ratably, to pay interest accrued in respect of the Revolving Loans (other than Protective Advances and Swing Loans), until paid in full,

(J) tenth, ratably to:

1. pay the principal of all Revolving Loans (other than Protective Advances and Swing Loans), until paid in full,

2. Agent, to be held by Agent, for the benefit of Issuing Bank (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Bank, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof), and

3. (y) the Bank Product Providers based upon amounts then certified by each applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Provider on account of Bank Product Obligations, and (z) with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(iii), beginning with tier (A) hereof,

(K) eleventh, to pay any other Obligations other than Obligations owed to Defaulting Lenders,

(L) twelfth, ratably to pay any Obligations owed to Defaulting Lenders; and

(M) thirteenth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iv) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(v) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(ii) shall not apply to any payment made by Borrowers to Agent and specified by Borrowers to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(vi) For purposes of Section 2.4(b)(iii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of

whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, and less any applicable withholding.

(vii) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Revolver Commitments**. The Revolver Commitments shall terminate on the Maturity Date or earlier termination thereof pursuant to the terms of this Agreement. Borrowers may reduce the Revolver Commitments, without premium or penalty, to an amount (which may be zero) not less than the sum of (A) the Revolver Usage as of such date, *plus* (B) the principal amount of all Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.3(a), *plus* (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrowers pursuant to Section 2.11(a). Each such reduction shall be in an amount which is not less than $3,000,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than $3,000,000), shall be made by providing not less than five Business Days prior written notice to Agent (or such shorter period of time as consented to by Agent), and shall be irrevocable; provided that (A) such notice may state that it is conditioned upon the effectiveness of other credit facilities or any other financing, sale or other transaction and (B) if such notice includes such statement, then Administrative Borrower shall notify Agent of the effectiveness of such other credit facilities or financing, sale or other transaction upon the occurrence of such event and (C) if Agent does not receive the notice of such event occurring on or prior to the date specified for such reduction in such notice of reduction (or within such other period as Agent may agree), such notice of reduction shall be deemed rescinded and of no force and effect. The Revolver Commitments, once reduced, may not be increased. Each such reduction of the Revolver Commitments shall reduce the Revolver Commitments of each Lender proportionately in accordance with its ratable share thereof. In connection with any reduction in the Revolver Commitments prior to the Maturity Date, if any Loan Party or any of its Subsidiaries owns any Margin Stock, Borrowers shall deliver to Agent an updated Form U-1 (with sufficient additional originals thereof for each Lender), duly executed and delivered by the Borrowers, together with such other documentation as Agent shall reasonably request, in order to enable Agent and the Lenders to comply with any of the requirements under Regulations T, U or X of the Federal Reserve Board.

(d) **Optional Prepayments**. Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part, without premium or penalty.

(e) **Mandatory Prepayments**.

(i) **Borrowing Base**. If, at any time, (A) the Revolver Usage on such date exceeds (B) the lesser of (x) the Borrowing Base reflected in the Borrowing Base Certificate most recently delivered by Borrowers to Agent, or (y) the Maximum Revolver Amount, in all cases

as adjusted for Reserves established by Agent in accordance with Section 2.1(c), then Borrowers shall immediately prepay the Obligations in accordance with Section 2.4(f)(i)(A) in an aggregate amount equal to the amount of such excess.

(ii) **Asset Sale and Dispositions**. Within one Business Day of the date of receipt by any Loan Party of the Net Cash Proceeds of (A) any voluntary or involuntary ABL Facility Priority Lien Collateral or (B) insurance or arising from casualty losses or condemnations in respect of ABL Facility Priority Lien Collateral, Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f) in an amount equal to 100% of such Net Cash Proceeds in excess of $5,000,000 received by such Person in connection with such sales or dispositions; provided, that if a Cash Dominion Period (as defined in the Guaranty and Security Agreement) is in effect, Borrowers shall prepay 100% of such Net Cash Proceeds without reference to such $5,000,000 basket. Nothing contained in this Section 2.4(e)(ii) shall permit any Borrower or any of its Restricted Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(f) **Application of Payments**. Each prepayment pursuant to Section 2.4(e) shall, (1) so long as no Application Event shall have occurred and be continuing, be applied, first, to the outstanding principal amount of the Revolving Loans until paid in full, and second, to cash collateralize the Letters of Credit in an amount equal to 105% of the then outstanding Letter of Credit Usage, and (2) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(iii).

2.5. **Promise to Pay; Promissory Notes**.

(a) Borrowers agree to pay the Lender Group Expenses (i) representing amounts invoiced to Agent by third parties, within three (3) Business Days of demand by Agent thereof, which demand shall include a copy of the applicable invoice and (ii) representing amounts owing directly by Borrowers to Agent, on the earlier of (x) the first day of the month following the date on which the applicable Lender Group Expenses were first incurred, or (y) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (ii)). Agent will endeavor to provide Administrative Borrower with written invoices relating to amounts payable pursuant to clause (ii) above prior to payment thereof, but shall have no liability for its failure to do so. Borrowers jointly and severally promise to pay all of the Obligations (including principal, interest, premiums, if any, fees, costs, and expenses (including Lender Group Expenses)) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement. Borrowers agree that their obligations contained in the first sentence of this Section 2.5(a) shall survive payment or satisfaction in full of all other Obligations.

(b) Any Lender may request that any portion of its Commitments or the Loans made by it be evidenced by one or more promissory notes. In such event, Borrowers shall execute and deliver to such Lender the requested promissory notes payable to the order of such Lender in a form furnished by Agent and reasonably satisfactory to Borrowers. Thereafter, the portion of the Commitments and Loans evidenced by such promissory notes and interest thereon shall at all

times be represented by one or more promissory notes in such form payable to the order of the payee named therein.

2.6. **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations**.

(a) **Interest Rates**. Except as provided in Section 2.6(c) and Section 2.12(d), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the daily balance thereof at the Daily One Month LIBOR in effect from time to time, plus the Applicable Margin.

(b) **Letter of Credit Fee**. Borrowers shall pay Agent (for the ratable benefit of the Revolving Lenders), a Letter of Credit fee (the "Letter of Credit Fee") (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.11(k)) that shall accrue at a *per annum* rate equal to the LIBOR Rate Margin times the average amount of the Letter of Credit Usage during the immediately preceding month (or portion thereof).

(c) **Default Rate**. (i) Automatically upon the occurrence and during the continuation of an Event of Default under Section 8.4 or 8.5 and (ii) upon the occurrence and during the continuation of any other Event of Default (other than an Event of Default under Section 8.4 or 8.5), at the direction of Agent or the Required Lenders, and upon written notice by Agent to Borrowers of such direction (provided, that such notice shall not be required for any Event of Default under Section 8.1), (A) all Loans and all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a *per annum* rate equal to two percentage points above the *per annum* rate otherwise applicable thereunder, and (B) the Letter of Credit Fee shall be increased to two percentage points above the *per annum* rate otherwise applicable hereunder.

(d) **Payment**. Except to the extent provided to the contrary in Section 2.10 or Section 2.11(k), (i) all interest and all other fees payable hereunder or under any of the other Loan Documents (other than Letter of Credit Fees) shall be due and payable, in arrears, on the first day of each month, (ii) all Letter of Credit Fees payable hereunder, and all fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.11(k) shall be due and payable, in arrears, on the first Business Day of each month, and (iii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all other Lender Group Expenses shall be due and payable on (x) with respect to Lender Group Expenses outstanding as of the Closing Date, the Closing Date, and (y) otherwise, the earlier of (A) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred, or (B) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Revolving Loans hereunder, (B) on the first Business Day of each month, all Letter of Credit Fees accrued or chargeable hereunder during the prior month, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.10(a) or (c), (D) on the first day of each month, the Unused Line Fee accrued during the prior

month pursuant to Section 2.10(b), (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) on the Closing Date, all other Lender Group Expenses incurred through the Closing Date, (G) after the Closing Date, with respect to Lender Group Expenses representing amounts invoiced to Agent by third parties, within three Business Days of Administrative Borrower's receipt of demand by Agent thereof, which demand shall include a copy of the applicable invoice, (H) after the Closing Date, with respect to Lender Group Expenses representing amounts owing directly by Borrowers to Agent, as and when incurred or accrued, provided that Agent will endeavor to provide Administrative Borrower with written invoices under this clause (H) prior to payment thereof, but shall have no liability for its failure to do so, and (I) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Loan Account shall thereupon constitute Revolving Loans hereunder, shall constitute Obligations hereunder, and shall accrue interest at the Applicable Rate.

(e) **Computation**. All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. The interest rate on the Obligations shall increase or decrease by an amount equal to each increase or decrease in Daily One Month LIBOR in the case of LIBOR Rate Loans effective on the date of any change in Daily One Month LIBOR, and if at any time there are Base Rate Loans, an amount equal to each increase or decrease in the Base Rate effective on the date of any change in the Base Rate. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error.

(f) **Intent to Limit Charges to Maximum Lawful Rate**. In no event shall the interest rate or rates payable under this Agreement, *plus* any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, that anything contained herein to the contrary notwithstanding, if such rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7. **Crediting Payments**. The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 1:30 p.m. on a Business Day

(unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8. **Designated Account**. Agent is authorized to make the Revolving Loans, and Issuing Bank is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any Revolving Loan or Swing Loan requested by Borrowers and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9. **Maintenance of Loan Account; Statements of Obligations**. Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with all Revolving Loans (including Extraordinary Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrowers or for Borrowers' account, the Letters of Credit issued or arranged by Issuing Bank for Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount of the Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 30 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10. **Fees**.

(a) **Agent Fees**. Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Unused Line Fee**. Borrowers shall pay to Agent, for the ratable account of the Revolving Lenders, an unused line fee (the "Unused Line Fee") in an amount equal to the Applicable Unused Line Fee Percentage *per annum* times the result of (i) the aggregate amount of the Revolver Commitments, *less* (ii) the Average Revolver Usage during the immediately preceding month (or portion thereof), which Unused Line Fee shall be due and payable, in arrears, on the first day of each month from and after the Closing Date up to the first day of the month prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full.

(c) **Field Examination and Other Fees**. Subject to any limitations set forth in Section 5.7(b), Borrowers shall pay to Agent, field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, as follows (i) a fee of $1,000 per day, per examiner, *plus* reasonable and documented out-of-pocket expenses (including travel, meals, and lodging) for each field examination of any Loan Party performed by or on behalf of Agent, and (ii) the fees, charges and reasonable and documented expenses paid or incurred by Agent if it elects to employ the services of one or more third Persons to appraise the ABL Facility Priority Lien Collateral, or any portion thereof. Agent will provide Administrative Borrower with copies of invoices that Agent receives from third parties that constitute such Lender Group Expenses three Business Days before such amounts shall be due hereunder, and will provide invoices or include such Lender Group Expenses of Agent on the statements provided by Agent to Administrative Borrower hereunder consistent with the customary practice of Agent. Agent will endeavor to provide Administrative Borrower with such invoices or statements relating to such Lender Group Expenses of Agent prior to payment thereof, but shall have no liability for its failure to do so.

2.11. **Letters of Credit**.

(a) Subject to the terms and conditions of this Agreement, upon the request of Borrowers made in accordance herewith, and prior to the Maturity Date, Issuing Bank agrees to issue a requested standby Letter of Credit or a sight commercial Letter of Credit for the account of Borrowers or any other Loan Party; provided that a Borrower will be the applicant; provided, further that aggregate undrawn amount of all Letters of Credit issued for the account of any Loan Parties other than the Borrowers at any time outstanding shall not exceed $1,000,000. By submitting a request to Issuing Bank for the issuance of a Letter of Credit, Borrowers shall be deemed to have requested that Issuing Bank issue the requested Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal or extension of any outstanding Letter of Credit, shall be (i) irrevocable and made in writing by an Authorized Person, (ii) delivered to Agent and Issuing Bank via telefacsimile or other electronic method of transmission reasonably acceptable to Agent and Issuing Bank and reasonably in advance of the requested date of issuance, amendment, renewal or extension, and (iii) subject to Issuing Bank's authentication procedures with results satisfactory to Issuing Bank. Each such request shall be in form and substance reasonably satisfactory to Agent and Issuing Bank and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal or extension, identification of the Letter of Credit to be so amended, renewed or extended) as shall be necessary to prepare, amend, renew or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as Agent or Issuing Bank may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Bank generally requests for Letters of Credit in similar circumstances. Issuing Bank's records of the content of any such request will be conclusive. Anything contained herein to the contrary notwithstanding, Issuing Bank may, but shall not be obligated to, issue a Letter of Credit that supports the obligations of a Loan Party or one of its Subsidiaries in respect of (x) a lease of real property, or (y) an employment contract.

(b) Issuing Bank shall have no obligation to issue a Letter of Credit if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed the Letter of Credit Sublimit, or

(ii) the Letter of Credit Usage would exceed the Maximum Revolver Amount *less* the outstanding amount of Revolving Loans (including Swing Loans), or

(iii) the Letter of Credit Usage would exceed the Borrowing Base at such time *less* the outstanding principal balance of the Revolving Loans (inclusive of Swing Loans) at such time.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, Issuing Bank shall not be required to issue or arrange for such Letter of Credit to the extent (i) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(g)(ii), or (ii) Issuing Bank has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate Issuing Bank's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include Borrowers cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(g)(ii). Additionally, Issuing Bank shall have no obligation to issue or extend a Letter of Credit if (A) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Bank from issuing such Letter of Credit, or any law applicable to Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Bank shall prohibit or request that Issuing Bank refrain from the issuance of letters of credit generally or such Letter of Credit in particular, or (B) the issuance of such Letter of Credit would violate one or more policies of Issuing Bank applicable to letters of credit generally.

(d) Any Issuing Bank (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day prior to the Business Day on which such Issuing Bank issues any Letter of Credit. In addition, each Issuing Bank (other than Wells Fargo or any of its Affiliates) shall, on the first Business Day of each week, submit to Agent a report detailing the daily undrawn amount of each Letter of Credit issued by such Issuing Bank during the prior calendar week. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Bank, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Bank makes a payment under a Letter of Credit, Borrowers shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the Business Day such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the Applicable Rate. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Bank shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to

Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to Section 2.11(e) to reimburse Issuing Bank, then to such Revolving Lenders and Issuing Bank as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(d), each Revolving Lender agrees to fund its Pro Rata Share of any Revolving Loan deemed made pursuant to Section 2.11(d) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Bank the amounts so received by it from the Revolving Lenders. By the issuance of a Letter of Credit (or an amendment, renewal or extension of a Letter of Credit) and without any further action on the part of Issuing Bank or the Revolving Lenders, Issuing Bank shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Bank, in an amount equal to its Pro Rata Share of such Letter of Credit, and each such Revolving Lender agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Bank under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Bank, such Revolving Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Bank and not reimbursed by Borrowers on the date due as provided in Section 2.11(d), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Bank elects, based upon the advice of counsel, to refund) to Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Bank, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(e) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Revolving Lender fails to make available to Agent the amount of such Revolving Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Revolving Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Bank) shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Each Borrower agrees to indemnify, defend and hold harmless each member of the Lender Group (including Issuing Bank and its branches, Affiliates, and correspondents) and each such Person's respective directors, officers, employees, attorneys and agents (each, including Issuing Bank, a "Letter of Credit Related Person") in accordance with Section 10.3 and the terms hereof (the "Letter of Credit Indemnified Costs"), and which arise out of or in connection with, or as a result of:

(i) any Letter of Credit or any pre-advice of its issuance;

(ii) any transfer, sale, delivery, surrender or endorsement (or lack thereof) of any Drawing Document at any time(s) held by any such Letter of Credit Related Person in connection with any Letter of Credit;

(iii) any action or proceeding arising out of, or in connection with, any Letter of Credit (whether administrative, judicial or in connection with arbitration), including any

action or proceeding to compel or restrain any presentation or payment under any Letter of Credit, or for the wrongful dishonor of, or honoring a presentation under, any Letter of Credit;

(iv) any independent undertakings issued by the beneficiary of any Letter of Credit;

(v) any unauthorized instruction or request made to Issuing Bank in connection with any Letter of Credit or requested Letter of Credit, or any error, omission, interruption or delay in such instruction or request, whether transmitted by mail, courier, electronic transmission, SWIFT, or any other telecommunication including communications through a correspondent;

(vi) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated;

(vii) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of Letter of Credit proceeds or holder of an instrument or document;

(viii) the fraud, forgery or illegal action of parties other than the Letter of Credit Related Person;

(ix) any prohibition on payment or delay in payment of any amount payable by Issuing Bank to a beneficiary or transferee beneficiary of a Letter of Credit arising out of Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions;

(x) Issuing Bank's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation;

(xi) any foreign language translation provided to Issuing Bank in connection with any Letter of Credit;

(xii) any foreign law or usage as it relates to Issuing Bank's issuance of a Letter of Credit in support of a foreign guaranty including the expiration of such guaranty after the related Letter of Credit expiration date and any resulting drawing paid by Issuing Bank in connection therewith; or

(xiii) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of the Letter of Credit Related Person;

provided, that such indemnity shall not be available to any Letter of Credit Related Person claiming indemnification under clauses (i) through (xiii) above to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence, bad faith or willful misconduct of the Letter of Credit Related Person claiming indemnity. Borrowers hereby agree to pay the Letter of Credit Related Person claiming indemnity on demand from time to time all amounts owing under this Section 2.11(f). If and to the extent that the obligations of Borrowers

under this Section 2.11(f) are unenforceable for any reason, Borrowers agree to make the maximum contribution to the Letter of Credit Indemnified Costs permissible under applicable law. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

(g) The liability of Issuing Bank (or any other Letter of Credit Related Person) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrowers that are caused directly by Issuing Bank's gross negligence, bad faith or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit, or (iii) retaining Drawing Documents presented under a Letter of Credit. Borrowers' aggregate remedies against Issuing Bank and any Letter of Credit Related Person for wrongfully honoring a presentation under any Letter of Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by Borrowers to Issuing Bank in respect of the honored presentation in connection with such Letter of Credit under Section 2.11(d), *plus* interest at the Applicable Rate. Borrowers shall take action to avoid and mitigate the amount of any damages claimed against Issuing Bank or any other Letter of Credit Related Person, including by enforcing its rights against the beneficiaries of the Letters of Credit. Any claim by Borrowers under or in connection with any Letter of Credit shall be reduced by an amount equal to the sum of (x) the amount (if any) saved by Borrowers as a result of the breach or alleged wrongful conduct complained of, and (y) the amount (if any) of the loss that would have been avoided had Borrowers taken all reasonable steps to mitigate any loss, and in case of a claim of wrongful dishonor, by specifically and timely authorizing Issuing Bank to effect a cure.

(h) Borrowers are responsible for the final text of the Letter of Credit as issued by Issuing Bank, irrespective of any assistance Issuing Bank may provide such as drafting or recommending text or by Issuing Bank's use or refusal to use text submitted by Borrowers. Borrowers understand that the final form of any Letter of Credit may be subject to such revisions and changes as are deemed necessary or appropriate by Issuing Bank, and Borrowers hereby consent to such revisions and changes not materially different from the application executed in connection therewith. Borrowers are solely responsible for the suitability of the Letter of Credit for Borrowers' purposes. If Borrowers request Issuing Bank to issue a Letter of Credit for an affiliated or unaffiliated third party (an "Account Party"), (i) such Account Party shall have no rights against Issuing Bank; (ii) Borrowers shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Letter of Credit shall be among Issuing Bank and Borrowers. Borrowers will examine the copy of the Letter of Credit and any other documents sent by Issuing Bank in connection therewith and shall promptly notify Issuing Bank (not later than three (3) Business Days following Borrowers' receipt of documents from Issuing Bank) of any non-compliance with Borrowers' instructions and of any discrepancy in any document under any presentment or other irregularity. Borrowers understand and agree that Issuing Bank is not required to extend the expiration date of any Letter of Credit for any reason. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, Issuing Bank, in its sole and absolute discretion, may give notice of non-extension of such Letter of Credit and, if Borrowers do not at any time want the then current expiration date of such Letter of Credit to be extended, Borrowers will so notify Agent

and Issuing Bank at least 30 calendar days before Issuing Bank is required to notify the beneficiary of such Letter of Credit or any advising bank of such non-extension pursuant to the terms of such Letter of Credit.

(i) Borrowers' reimbursement and payment obligations under this Section 2.11 are absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including:

(i) any lack of validity, enforceability or legal effect of any Letter of Credit, any Issuer Document, this Agreement, or any Loan Document, or any term or provision therein or herein;

(ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document that does not comply in whole or in part with the terms of the applicable Letter of Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit;

(iii) Issuing Bank or any of its branches or Affiliates being the beneficiary of any Letter of Credit;

(iv) Issuing Bank or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit;

(v) the existence of any claim, set-off, defense or other right that any Loan Party or any of its Subsidiaries may have at any time against any beneficiary or transferee beneficiary, any assignee of proceeds, Issuing Bank or any other Person;

(vi) Issuing Bank or any correspondent honoring a drawing upon receipt of an electronic presentation under a Letter of Credit requiring the same, regardless of whether the original Drawing Documents arrive at Issuing Bank's counters or are different from the electronic presentation;

(vii) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this Section 2.11(i), constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, any Borrower's or any of its Subsidiaries' reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against Issuing Bank, the beneficiary or any other Person; or

(viii) the fact that any Default or Event of Default shall have occurred and be continuing;

provided, that, subject to Section 2.11(g) above, the foregoing shall not release Issuing Bank from such liability to Borrowers as may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction against Issuing Bank following reimbursement or payment of the

obligations and liabilities, including reimbursement and other payment obligations, of Borrowers to Issuing Bank arising under, or in connection with, this Section 2.11 or any Letter of Credit.

(j) Without limiting any other provision of this Agreement, Issuing Bank and each other Letter of Credit Related Person (if applicable) shall not be responsible to Borrowers for, and Issuing Bank's rights and remedies against Borrowers and the obligation of Borrowers to reimburse Issuing Bank for each drawing under each Letter of Credit shall not be impaired by:

(i) honor of a presentation under any Letter of Credit that on its face substantially complies with the terms and conditions of such Letter of Credit, even if the Letter of Credit requires strict compliance by the beneficiary;

(ii) honor of a presentation of any Drawing Document that appears on its face to have been signed, presented or issued (A) by any purported successor or transferee of any beneficiary or other Person required to sign, present or issue such Drawing Document or (B) under a new name of the beneficiary;

(iii) acceptance as a draft of any written or electronic demand or request for payment under a Letter of Credit, even if nonnegotiable or not in the form of a draft or notwithstanding any requirement that such draft, demand or request bear any or adequate reference to the Letter of Credit;

(iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness or legal effect of any Drawing Document (other than Issuing Bank's determination that such Drawing Document appears on its face substantially to comply with the terms and conditions of the Letter of Credit);

(v) acting upon any instruction or request relative to a Letter of Credit or requested Letter of Credit that Issuing Bank in good faith believes to have been given by a Person authorized to give such instruction or request;

(vi) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation or any delay in giving or failing to give notice to any Borrower;

(vii) any acts, omissions or fraud by, or the insolvency of, any beneficiary, any nominated person or entity or any other Person or any breach of contract between any beneficiary and any Borrower or any of the parties to the underlying transaction to which the Letter of Credit relates;

(viii) assertion or waiver of any provision of the ISP or UCP that primarily benefits an issuer of a letter of credit, including any requirement that any Drawing Document be presented to it at a particular hour or place;

(ix) payment to any presenting bank (designated or permitted by the terms of the applicable Letter of Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under Standard Letter of Credit Practice applicable to it;

(x) acting or failing to act as required or permitted under Standard Letter of Credit Practice applicable to where Issuing Bank has issued, confirmed, advised or negotiated such Letter of Credit, as the case may be;

(xi) honor of a presentation after the expiration date of any Letter of Credit notwithstanding that a presentation was made prior to such expiration date and dishonored by Issuing Bank if subsequently Issuing Bank or any court or other finder of fact determines such presentation should have been honored;

(xii) dishonor of any presentation that does not strictly comply or that is fraudulent, forged or otherwise not entitled to honor; or

(xiii) honor of a presentation that is subsequently determined by Issuing Bank to have been made in violation of international, federal, state or local restrictions on the transaction of business with certain prohibited Persons.

(k) Borrowers shall pay immediately upon demand to Agent for the account of Issuing Bank as non-refundable fees, commissions, and charges (it being acknowledged and agreed that any charging of such fees, commissions, and charges to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this Section 2.11(k)): (i) a fronting fee which shall be imposed by Issuing Bank equal to .125% *per annum* times the average amount of the Letter of Credit Usage during the immediately preceding month, *plus* (ii) any and all other customary commissions, fees and charges then in effect imposed by, and any and all expenses incurred by, Issuing Bank, or by any adviser, confirming institution or entity or other nominated person, relating to Letters of Credit, at the time of issuance of any Letter of Credit and upon the occurrence of any other activity with respect to any Letter of Credit (including transfers, assignments of proceeds, amendments, drawings, extensions or cancellations).

(l) If by reason of (x) any Change in Law, or (y) compliance by Issuing Bank or any other member of the Lender Group with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board of Governors as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or any Loans or obligations to make Loans hereunder or hereby, or

(ii) there shall be imposed on Issuing Bank or any other member of the Lender Group any other condition regarding any Letter of Credit, Loans, or obligations to make Loans hereunder,

and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Bank or any other member of the Lender Group of issuing, making, participating in, or maintaining any Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrowers, and Borrowers shall pay within 30 days after demand

therefor, such amounts as Agent may specify to be necessary to compensate Issuing Bank or any other member of the Lender Group for such additional cost or reduced receipt (other than with respect to Taxes, which shall be governed by Section 16), together with interest on such amount from the date of such demand until payment in full thereof at the Applicable Rate; provided, that (A) Borrowers shall not be required to provide any compensation pursuant to this Section 2.11(l) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Borrowers, and (B) if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(l), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(m) Each standby Letter of Credit shall expire not later than the date that is 12 months after the date of the issuance of such Letter of Credit; provided, that any standby Letter of Credit may provide for the automatic extension thereof for any number of additional periods each of up to one year in duration; provided further, that with respect to any Letter of Credit which extends beyond the Maturity Date, Letter of Credit Collateralization shall be provided therefor on or before the date that is five Business Days prior to the Maturity Date (or such later date as may be agreed by the applicable Issuing Bank). Each commercial Letter of Credit shall expire on the earlier of (i) 120 days after the date of the issuance of such commercial Letter of Credit and (ii) five Business Days prior to the Maturity Date.

(n) If (i) any Event of Default shall occur and be continuing, or (ii) Availability shall at any time be less than zero, then on the Business Day following the date when the Administrative Borrower receives notice from Agent or the Required Lenders (or, if the maturity of the Obligations has been accelerated, Revolving Lenders with Letter of Credit Exposure representing greater than 50% of the total Letter of Credit Exposure) demanding Letter of Credit Collateralization pursuant to this Section 2.11(n) upon such demand, Borrowers shall provide Letter of Credit Collateralization with respect to the then existing Letter of Credit Usage. If Borrowers fail to provide Letter of Credit Collateralization as required by this Section 2.11(n), the Revolving Lenders may (and, upon direction of Agent, shall) advance, as Revolving Loans the amount of the cash collateral required pursuant to the Letter of Credit Collateralization provision so that the then existing Letter of Credit Usage is cash collateralized in accordance with the Letter of Credit Collateralization provision (whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in Section 3 are satisfied).

(o) Unless otherwise expressly agreed by Issuing Bank and Borrowers when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

(p) Issuing Bank shall be deemed to have acted with due diligence and reasonable care if Issuing Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement.

(q) In the event of a direct conflict between the provisions of this Section 2.11 and any provision contained in any Issuer Document, it is the intention of the parties hereto that

such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11 shall control and govern.

(r) The provisions of this Section 2.11 shall survive the termination of this Agreement and the repayment in full of the Obligations with respect to any Letters of Credit that remain outstanding.

(s) At Borrowers' cost and expense, Borrowers shall execute and deliver to Issuing Bank such additional certificates, instruments and/or documents and take such additional action as may be reasonably requested by Issuing Bank to enable Issuing Bank to issue any Letter of Credit pursuant to this Agreement and related Issuer Document, to protect, exercise and/or enforce Issuing Banks' rights and interests under this Agreement or to give effect to the terms and provisions of this Agreement or any Issuer Document. Each Borrower irrevocably appoints Issuing Bank as its attorney-in-fact and authorizes Issuing Bank, without notice to Borrowers, to execute and deliver ancillary documents and letters customary in the letter of credit business that may include but are not limited to advisements, indemnities, checks, bills of exchange and issuance documents. The power of attorney granted by the Borrowers is limited solely to such actions related to the issuance, confirmation or amendment of any Letter of Credit and to ancillary documents or letters customary in the letter of credit business. This appointment is coupled with an interest.

2.12. **Special Provisions Applicable to Daily One Month LIBOR**.

(a) **Adjustment of Daily One Month LIBOR**. The Daily One Month LIBOR may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs (other than Taxes, which shall be governed by Section 16), in each case, due to changes in applicable law, including any Changes in Law and changes in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the Daily One Month LIBOR. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting such Daily One Month LIBOR and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans of such Lender with respect to which such adjustment is made.

(b) **Change in Law**. Subject to the provisions set forth in Section 2.12(c) below, in the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the Daily One Month LIBOR, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (i) interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (ii) interest based

on the Daily One Month LIBOR shall not be available until such Lender determines that it would no longer be unlawful or impractical to do so.

(c) **Effect of Benchmark Transition Event**.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, Agent and Administrative Borrower may amend this Agreement to replace the Daily One Month LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after Agent has posted such proposed amendment to all Lenders and Administrative Borrower so long as Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to Agent written notice that such Required Lenders accept such amendment. No replacement of the Daily One Month LIBOR with a Benchmark Replacement pursuant to this Section 2.12(c) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. Agent will promptly notify Administrative Borrower and the Lenders of (1) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (2) the implementation of any Benchmark Replacement, (3) the effectiveness of any Benchmark Replacement Conforming Changes, and (4) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Agent or Lenders pursuant to this Section 2.12(c) including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.12(c).

(iv) Benchmark Unavailability Period. Upon Administrative Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, Administrative Borrower may revoke any request for a LIBOR Rate Loan Borrowing of, conversion to or continuation of LIBOR Rate Loans to be made, during any Benchmark Unavailability Period and, failing that, Administrative Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans.

(d) **No Requirement of Matched Funding**. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the Daily One Month LIBOR.

2.13. **Capital Requirements**.

(a) If, after the date hereof, Issuing Bank or any Lender determines that (i) any Change in Law regarding capital, liquidity or reserve requirements for banks or bank holding companies, or (ii) compliance by Issuing Bank or such Lender, or their respective parent bank holding companies, with any guideline, request or directive of any Governmental Authority regarding capital adequacy or liquidity requirements (whether or not having the force of law), has the effect of reducing the return on Issuing Bank's, such Lender's, or such holding companies' capital or liquidity as a consequence of Issuing Bank's or such Lender's commitments, Loans, participations or other obligations hereunder to a level below that which Issuing Bank, such Lender, or such holding companies could have achieved but for such Change in Law or compliance (taking into consideration Issuing Bank's, such Lender's, or such holding companies' then existing policies with respect to capital adequacy or liquidity requirements and assuming the full utilization of such entity's capital) by any amount deemed by Issuing Bank or such Lender to be material, then Issuing Bank or such Lender may notify Borrowers and Agent thereof. Following receipt of such notice, Borrowers agree to pay Issuing Bank or such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by Issuing Bank or such Lender of a statement in the amount and setting forth in reasonable detail Issuing Bank's or such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, Issuing Bank or such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Issuing Bank or any Lender to demand compensation pursuant to this Section shall not constitute a waiver of Issuing Bank's or such Lender's right to demand such compensation; provided, that Borrowers shall not be required to compensate Issuing Bank or a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that Issuing Bank or such Lender notifies Borrowers of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further, that if such claim arises by reason of the Change in Law that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

(b) If Issuing Bank or any Lender requests additional or increased costs referred to in Section 2.11(l) or Section 2.12(a) or amounts under Section 2.13(a) or sends a notice under Section 2.12(b) or requires any Loan Party to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 16 (such Issuing Bank or Lender, an "Affected Lender"), then, at the request of Administrative Borrower, such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.11(l), Section 2.12(a), Section 2.13(a) or Section 16, as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans, and (ii) in the reasonable judgment

of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.11(l), Section 2.12(a), Section 2.13(a) or Section 16, as applicable, or to enable Borrowers to obtain LIBOR Rate Loans, then Borrowers (without prejudice to any amounts then due to such Affected Lender under Section 2.11(l), Section 2.12(a), Section 2.13(a) or Section 16, as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.11(l), Section 2.12(a), Section 2.13(a) or Section 16, as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans, may designate a different Issuing Bank or substitute a Lender or prospective Lender, in each case, reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments (and the Affected Lender agrees that it shall be deemed to have executed and delivered an assignment if it fails to do so within ten Business Days of such Replacement Lender's agreement to purchase the Affected Lenders Obligations and commitments), and upon such purchase by the Replacement Lender, which such Replacement Lender shall be deemed to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement and such Affected Lender shall cease to be "Issuing Bank" or a "Lender" (as the case may be) for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.11(l), 2.12(a), and 2.13 shall be available to Issuing Bank and each Lender (as applicable) regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for issuing banks or lenders affected thereby to comply therewith. Notwithstanding any other provision herein, neither Issuing Bank nor any Lender shall demand compensation pursuant to this Section 2.13 if it shall not at the time be the general policy or practice of Issuing Bank or such Lender (as the case may be) to demand such compensation in similar circumstances under comparable provisions of other credit agreements, if any, and any compensation or reimbursement requested pursuant to this Section 2.13 shall be without duplication of any amounts that the Loan Parties are otherwise required to pay to Issuing Bank or any Lender under this Agreement.

2.14. **[Reserved]**.

2.15. **Joint and Several Liability of Borrowers**.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them. Accordingly, each Borrower hereby waives any and all suretyship defenses that would otherwise be available to such Borrower under applicable law.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due, whether upon maturity, acceleration, or otherwise, or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligations until such time as all of the Obligations are paid in full, and without the need for demand, protest, or any other notice or formality.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever.

(e) Without limiting the generality of the foregoing and except as otherwise expressly provided in this Agreement, each Borrower hereby waives presentments, demands for performance, protests and notices, including notices of acceptance of its joint and several liability, notice of any Revolving Loans or any Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Agreement, notices of the existence, creation, or incurring of new or additional Obligations or other financial accommodations or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any right to proceed against any other Borrower or any other Person, to proceed against or exhaust any security held from any other Borrower or any other Person, to protect, secure, perfect, or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any other Borrower, any other Person, or any collateral, to pursue any other remedy in any member of the Lender Group's or any Bank Product Provider's power whatsoever, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement), any right to assert against any member of the Lender Group or any Bank Product Provider, any defense (legal or equitable), set-off, counterclaim, or claim which each Borrower may now or at any time hereafter have against any other Borrower or any other party liable to any member of the Lender Group or any Bank Product Provider, any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor, and any right or defense arising by reason of any claim or defense based upon an election of remedies by any member of the Lender Group or any Bank Product Provider including any defense based upon an impairment or elimination of such Borrower's rights of subrogation, reimbursement, contribution, or indemnity of such Borrower against any other

Borrower. Without limiting the generality of the foregoing, each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or any Agent or Lender. Each of the Borrowers waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement hereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to any Borrower shall operate to toll the statute of limitations as to each of the Borrowers. Each of the Borrowers waives any defense based on or arising out of any defense of any Borrower or any other Person, other than payment of the Obligations to the extent of such payment, based on or arising out of the disability of any Borrower or any other Person, or the validity, legality, or unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Borrower other than payment of the Obligations to the extent of such payment. Agent may, at the election of the Required Lenders, foreclose upon any Collateral held by Agent by one or more judicial or nonjudicial sales or other dispositions, whether or not every aspect of any such sale is commercially reasonable or otherwise fails to comply with applicable law or may exercise any other right or remedy Agent, any other member of the Lender Group, or any Bank Product Provider may have against any Borrower or any other Person, or any security, in each case, without affecting or impairing in any way the liability of any of the Borrowers hereunder except to the extent the Obligations have been paid.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights that arise from the existence, payment, performance or enforcement of the provisions of this Section 2.15, including rights of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of Agent, any other member of the Lender Group, or any Bank Product Provider against any Borrower, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including the right to take or receive from any Borrower, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor. If any amount shall be paid to any Borrower in violation of the immediately preceding sentence, such amount shall be held in trust for the benefit of Agent, for the benefit of the Lender Group and the Bank Product Providers, and shall forthwith be paid to Agent to be credited and applied to the Obligations and all other amounts payable under this Agreement, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Obligations or other amounts payable under this Agreement thereafter arising. Notwithstanding anything to the contrary contained in this Agreement, no Borrower may exercise any rights of subrogation, contribution, indemnity, reimbursement or other similar rights against, and may not proceed or seek recourse against or with respect to any property or asset of, any other Borrower (the "Foreclosed Borrower"), including after payment in full of the Obligations, if all or any portion of the Obligations have been satisfied in connection with an exercise of remedies in respect of the Equity Interests of such Foreclosed Borrower whether pursuant to this Agreement or otherwise.

3. CONDITIONS; TERM OF AGREEMENT.

3.1. **Conditions Precedent to the Initial Extension of Credit**. The obligation of each Lender to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and each Lender, of each of the conditions precedent set forth on Schedule 3.1 to this Agreement (the making of such initial extensions of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent).

3.2. **Conditions Precedent to all Extensions of Credit**. The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of each Loan Party contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date); and

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof.

3.3. **Maturity**. The Commitments shall continue in full force and effect for a term ending on the Maturity Date (unless terminated earlier in accordance with the terms hereof).

3.4. **Effect of Maturity**. On the Maturity Date, or, if earlier, the date that the Commitments are terminated, whether pursuant to Section 3.5 or Section 9.1, all Commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations (other than Hedge Obligations) immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations (other than Hedge Obligations) in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Commitments have been terminated, Agent will, at Borrowers' sole expense, execute and deliver any payoff letters, termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably requested to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5. **Early Termination by Borrowers**. Borrowers have the option, at any time upon five Business Days prior written notice to Agent, to repay all of the Obligations in full and terminate the Commitments. The foregoing notwithstanding, (a) Borrowers may rescind

termination notices relative to proposed payments in full of the Obligations with the proceeds of third party Indebtedness if the closing for such issuance or incurrence does not happen on or before the date of the proposed termination (in which case, a new notice shall be required to be sent in connection with any subsequent termination), and (b) Borrowers may extend the date of termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed).

3.6. Conditions Subsequent. The obligation of the Lender Group (or any member thereof) to continue to make Revolving Loans (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 3.6 to this Agreement (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof (unless such date is extended, in writing, by Agent, which Agent may do without obtaining the consent of the other members of the Lender Group), shall constitute an Event of Default).

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, each Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Revolving Loan (or other extension of credit) made thereafter, as though made on and as of the date of such Revolving Loan (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date), and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. **Due Organization and Qualification; Subsidiaries**.

(a) Each Borrower and each of its Restricted Subsidiaries (i) is duly organized or incorporated and existing and in good standing under the laws of the jurisdiction of its organization or incorporation, (ii) is qualified to do business in any state where the failure to be so qualified would reasonably be expected to result in a Material Adverse Effect, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) [**Reserved**].

(c) Set forth on Schedule 4.1(c) to this Agreement (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries,

showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by each Loan Party. All of the outstanding Equity Interests of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(d) to this Agreement (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), there are no subscriptions, options, warrants, or calls relating to any shares of any Borrower's or any of its Restricted Subsidiaries' Equity Interests, including any right of conversion or exchange under any outstanding security or other instrument. No Borrower or Restricted Subsidiary is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interests or any security convertible into or exchangeable for any of its Equity Interests.

4.2. **Due Authorization; No Conflict**.

(a) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party, the Governing Documents of any Loan Party, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Restricted Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any material agreement of any Loan Party or its Restricted Subsidiaries where any such conflict, breach or default would individually or in the aggregate reasonably be expected to have a Material Adverse Effect, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any holder of Equity Interests of a Loan Party or any approval or consent of any Person under any material agreement of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of material agreements, for consents or approvals, the failure to obtain would not individually or in the aggregate reasonably be expected to cause a Material Adverse Effect.

4.3. **Governmental Consents**. The execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect and except for (a) filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation, as of the Closing Date and (b) such registrations, consents, approvals, notices, or other actions that the failure to be received, obtained or made would not be reasonably expected to have a Material Adverse Effect.

4.4. **Binding Obligations; Perfected Liens**.

(a) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) The provisions of this Agreement and the other Loan Documents create legal, valid and enforceable Liens on all the Collateral in favor of Agent, for the benefit of the Lender Group, subject, as to enforceability, to applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity and principles of good faith and dealing, and upon the making of such filings and taking of such other actions required to be taken hereby or by the applicable Loan Documents, Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations), (iv) commercial tort claims (other than those that, by the terms of the Guaranty and Security Agreement, are required to be perfected), and (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 7(k)(iv) of the Guaranty and Security Agreement, and subject only to the filing of financing statements and the recordation of the Mortgages, in each case, in the appropriate filing offices), subject only to Permitted Liens, with the priority required under the Loan Documents.

4.5. **Title to Assets; No Encumbrances**. Each of the Borrowers and their Restricted Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6. **Litigation**.

(a) There are no actions, suits, or proceedings pending or, to the knowledge of any Borrower, after due inquiry, threatened in writing against a Borrower or any of its Restricted Subsidiaries that either individually or in the aggregate would reasonably be expected to result in a Material Adverse Effect.

(b) Schedule 4.6(b) to this Agreement sets forth a complete and accurate description of each of the actions, suits, or proceedings with asserted liabilities in excess of, or that would reasonably be expected to result in liabilities in excess of, $1,000,000 that, as of the Closing Date, is pending or, to the knowledge of any Borrower, after due inquiry, threatened against a Borrower or any of its Restricted Subsidiaries.

4.7. **Compliance with Laws**. Neither any Borrower nor any of its Restricted Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes

(including Environmental Laws) that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

4.8. **No Material Adverse Effect**. All historical financial statements relating to the Borrowers and their Restricted Subsidiaries that have been delivered by the Borrowers to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Borrower's and their Restricted Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since December 31, 2019, no event, circumstance, or change has occurred that has or would reasonably be expected to result in a Material Adverse Effect.

4.9. **Solvency**.

(a) Each Loan Party is Solvent.

(b) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.10. **Employee Benefits**.

(a) Except as set forth on Schedule 4.10, no Borrower, none of their Restricted Subsidiaries, nor any of their ERISA Affiliates maintains or contributes to any Pension Plan or Multiemployer Plan.

(b) Each Borrower and each Restricted Subsidiary has complied in all material respects with ERISA, the IRC and all applicable laws regarding each Employee Benefit Plan.

(c) Each Employee Benefit Plan is, and has been, maintained in substantial compliance with ERISA, the IRC, all applicable laws and the terms of each such Employee Benefit Plan.

(d) Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service or is entitled to rely on an opinion letter provided under a volume submitted program. To the best knowledge of each Borrower after due inquiry, nothing has occurred which would prevent, or cause the loss of, such qualification.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, (i) no Notification Event exists or has occurred in the past six (6) years and (ii) no Borrower, Restricted Subsidiary or ERISA Affiliate has provided any security under Section 436 of the IRC.

4.11. **Environmental Condition**. Except as set forth on Schedule 4.11 to this Agreement, (a) to each Borrower's knowledge, no Borrower's nor any of its Restricted Subsidiaries' properties or assets has ever been used by a Borrower, its Restricted Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law and which violation would reasonably be expected to result in a Material Adverse Effect, (b) to each Borrower's knowledge, after due inquiry, no Borrower's nor any of its Restricted Subsidiaries' properties or assets is designated or identified in any manner pursuant to any Environmental Law as a Hazardous Materials disposal site, (c) no Borrower nor any of its Restricted Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Borrower or its Restricted Subsidiaries, and (d) no Borrower nor any of its Restricted Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

4.12. **Complete Disclosure**. All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Borrower or its Restricted Subsidiaries) furnished by or on behalf of a Borrower or its Restricted Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents (in each case, as modified or supplemented by further information so furnished), and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of any Borrower or its Restricted Subsidiaries) hereafter furnished by or on behalf of a Borrower or its Restricted Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections delivered to Agent on November 20, 2020 represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrowers' good faith estimate, on the date such Projections are delivered, of the Borrowers' and their Restricted Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrowers and their Restricted Subsidiaries, and no assurances can be given that such Projections will be realized, and although reflecting Borrowers' good faith estimate, projections or forecasts based on methods and assumptions which Borrowers believed to be reasonable at the time such Projections were prepared, are not to be viewed as facts, and that actual results during the period or periods covered by the Projections may differ materially from projected or estimated results). As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects.

4.13. **Patriot Act**. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign

assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001, as amended) (the "Patriot Act").

4.14. **[Reserved]**.

4.15. **Payment of Taxes**. Except as otherwise permitted under Section 5.5, all material Tax returns and reports of each Borrower and its Restricted Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all other material Taxes upon a Borrower and its Restricted Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable, except Taxes that are subject to a Permitted Protest. No Borrower knows of any proposed material Tax assessment against a Borrower or any of its Restricted Subsidiaries that is not being actively contested by such Borrower or such Restricted Subsidiary diligently, in good faith, and by appropriate proceedings; provided, that reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.16. **Margin Stock**. Neither any Borrower nor any of its Restricted Subsidiaries owns any Margin Stock or is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

4.17. **Governmental Regulation**. No Loan Party is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.18. **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. No Borrower or any of its Restricted Subsidiaries is in violation of any applicable Sanctions. No Borrower nor any of its Restricted Subsidiaries nor, to the knowledge of such Borrower, any director, officer, employee, agent or Affiliate of such Borrower or such Restricted Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Borrowers and its Restricted Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance with applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Borrowers and its Restricted Subsidiaries, and to the knowledge of each such Borrower, each director, officer, employee, agent and Affiliate of each such Borrower and each such Restricted Subsidiary, is in compliance with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned

Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any applicable Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

4.19. **Employee and Labor Matters**. There is (i) no unfair labor practice complaint pending or, to the knowledge of any Borrower, threatened against any Borrower or its Restricted Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Borrower or its Restricted Subsidiaries which arises out of or under any collective bargaining agreement and that would reasonably be expected to result in a material liability, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Borrower or its Restricted Subsidiaries that would reasonably be expected to result in a material liability, or (iii) to the knowledge of any Borrower, after due inquiry, no union representation question existing with respect to the employees of any Borrower or its Restricted Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Borrower or its Restricted Subsidiaries. None of any Borrower or its Restricted Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Borrower and its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. All material payments due from any Borrower or its Restricted Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrowers, except where the failure to do so would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

4.20. **Holding Companies**. Anagram LLC is a holding company and does not (a) have any material liabilities (other than Indebtedness arising under the Loan Documents, the First Lien Documents and the Second Lien Documents), or (b) engage in any business activity or own any material assets (other than the Capital Stock of the Company) and, indirectly, any other Subsidiary of the Company, performing its obligations under this Agreement and other Indebtedness, Liens and guarantees permitted hereunder, activities necessary to maintain its corporate existence and activities incidental to the foregoing. AIHI is a holding company and does not (a) have any material liabilities (other than Indebtedness arising under the Loan Documents, the First Lien Documents and the Second Lien Documents), or (b) engage in any business activities or own any material assets or performing its obligations under this Agreement and other Indebtedness, Liens and guarantees permitted hereunder, activities necessary to maintain its corporate existence and activities incidental to the foregoing.

4.21. **Leases**. Each Borrower and its Restricted Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Borrower or its Restricted Subsidiaries exists under any of them.

4.22. **Eligible Accounts**. As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of a Borrower's business, (b) owed to a Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria of which the Administrative Borrower has not been notified) set forth in the definition of Eligible Accounts.

4.23. **Eligible Inventory**. As to each item of Inventory that is identified by Borrowers as Eligible Finished Goods Inventory or Eligible Raw Materials Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than any Agent-discretionary criteria of which the Administrative Borrower has not been notified).

4.24. [**Reserved**].

4.25. **Location of Inventory**. Except as set forth in Schedule 4.25, the Inventory of the Loan Parties is not stored with a bailee, warehouseman, or similar party and is located only at, or in-transit between, the locations identified on Schedule 4.25 to this Agreement (as such Schedule may be updated pursuant to Section 5.14).

4.26. **Inventory Records**. Each Loan Party keeps correct and accurate records itemizing and describing the type, quality, and quantity of its Inventory and the book value thereof.

4.27. **[Reserved]**.

4.28. **Other Documents**. Borrowers have delivered to Agent complete and correct copies of the material First Lien Documents and the Second Lien Documents, including all schedules and exhibits thereto, as in existence on the Closing Date.

4.29. **Immaterial Subsidiaries**. No Immaterial Subsidiary (a) owns any assets (other than assets of a *de minimis* nature), (b) has any liabilities (other than liabilities of a *de minimis* nature), or (c) engages in any business activity.

4.30. **Hedge Agreements**. On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

5. AFFIRMATIVE COVENANTS.

Each Borrower covenants and agrees that, until the termination of all of the Commitments and payment in full of the Obligations:

5.1. **Financial Statements, Reports, Certificates**. Borrowers (a) will deliver to Agent, for delivery to each Lender, each of the financial statements, reports, and other items set

forth on Schedule 5.1 to this Agreement no later than the times specified therein, (b) agree that no Borrower or Restricted Subsidiary will have a fiscal year different from that of Anagram LLC, (c) agree to maintain a system of accounting that enables Borrowers to produce financial statements in accordance with GAAP, and (d) agree that they will, and will cause each other Restricted Subsidiary to, (i) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to their and their Restricted Subsidiaries' sales, and (ii) maintain their billing systems and practices substantially as in effect as of the Closing Date and shall only make material modifications thereto with notice to, and with the consent of, Agent (such consent not to be unreasonably withheld, conditioned or delayed).

5.2. **Reporting**. Borrowers (a) will deliver to Agent, for delivery for each Lender, each of the reports set forth on Schedule 5.2 to this Agreement at the times specified therein, and (b) agree to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule. Borrowers and Agent hereby agree that the delivery of the Borrowing Base Certificate through Agent's electronic platform or portal, subject to Agent's authentication process, by such other electronic method as may be approved by Agent from time to time in its sole discretion, or by such other electronic input of information necessary to calculate the Borrowing Bases as may be approved by Agent from time to time in its sole discretion, shall in each case be deemed to satisfy the obligation of Borrowers to deliver such Borrowing Base Certificate, with the same legal effect as if such Borrowing Base Certificate had been manually executed by Borrowers and delivered to Agent.

5.3. **Existence**. Except as otherwise permitted under Section 6.4 or Section 6.9, each Borrower will, and will cause each of its Restricted Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business except to the extent (other than with respect to the preservation of existence of the Borrowers) failure to do so would not reasonably be expected to result in a Material Adverse Effect; provided that no Borrower or any of its Restricted Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders.

5.4. **Maintenance of Properties**. Each Borrower will, and will cause each of its Restricted Subsidiaries to, maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty, and condemnation and dispositions permitted under this Agreement, excepted (and except where the failure to so maintain and preserve assets could not reasonably be expected to result in a Material Adverse Effect).

5.5. **Taxes**. Each Borrower will, and will cause each of its Restricted Subsidiaries to, pay in full before delinquency or before the expiration of any extension period all material Taxes imposed, levied, or assessed against it, or any of its assets or in respect of any of its income, businesses, or franchises, other than to the extent that the validity of such Tax is the subject of a Permitted Protest.

5.6. **Insurance**.

(a) Each Borrower will, and will cause each of its Restricted Subsidiaries to, at Borrowers' expense, maintain insurance respecting each of each Borrower's and its Restricted Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily are insured against by other Persons engaged in same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies reasonably acceptable to Agent (it being agreed that, as of the Closing Date, the Borrowers' and Restricted Subsidiaries' existing insurance providers as set forth in the certificates of insurance delivered to Agent on or about the Closing Date shall be deemed to be acceptable to Agent) and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy, and scope of the policies of insurance of Borrowers in effect as of the Closing Date are acceptable to Agent). Subject to the terms of the Intercreditor Agreement, all property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard lender's loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. Subject to the terms of the Intercreditor Agreement, all certificates of property and general liability insurance are to be delivered to Agent, with the lender's loss payable (but only in respect of the Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than thirty days (ten days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If any Borrower or its Restricted Subsidiaries fails to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims.

(b) Borrowers shall give Agent prompt notice of any loss exceeding $1,000,000 covered by the casualty or business interruption insurance of any Borrower or its Restricted Subsidiaries.

(c) If at any time the area in which any Real Property that is subject to a Mortgage is located is designated a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such total amount and on terms that are reasonably satisfactory to Agent and all Lenders from time to time, and otherwise comply with the Flood Laws or as is otherwise reasonably satisfactory to Agent and all Lenders.

5.7. **Inspection**.

(a) Each Borrower will, and will cause each of its Restricted Subsidiaries to, permit Agent and its duly authorized representatives or agents (accompanied by any Lender and its duly authorized representatives, at the sole expense of such Lender) to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by,

its officers and employees (provided, that an authorized representative of a Borrower shall be allowed to be present) at such reasonable times as may be agreed between Agent and any Borrower and, so long as no Default or Event of Default has occurred and is continuing, no more than once in any calendar year with reasonable prior notice to Borrowers and during regular business hours, at Borrowers' expense in accordance with the provisions of the Fee Letter, subject to the limitations set forth below in Section 5.7(b); provided that Borrowers shall not be required to disclose, permit the inspection, examination or making of copies or abstracts of, or any discussion of, any document, information, or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to Agent or any Lender (or their respective representatives or contractors) is prohibited by applicable law or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) Each Borrower will, and will cause each of its Restricted Subsidiaries to, permit Agent and each of its duly authorized representatives or agents to conduct field examinations, appraisals or valuations at such reasonable times and intervals as Agent may designate, at Borrowers' expense in accordance with the provisions of the Fee Letter; provided that, so long as no Event of Default shall have occurred and be continuing during a calendar year, Agent shall not conduct and Borrowers shall not be obligated to reimburse Agent for more than one field examination in such calendar year (increasing to two field examinations per calendar year if an Increased Reporting Event has occurred during such calendar year), and one Inventory appraisal in such calendar year (increasing to two Inventory appraisals per calendar year if an Increased Reporting Event has occurred during such calendar year, of which one such Appraisal shall be a desktop appraisal) in each case, except for field examinations and appraisals conducted in connection with a proposed Permitted Acquisition (whether or not consummated).

5.8. **Compliance with Laws**. Each Borrower will, and will cause each of its Restricted Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.9. **Environmental**. Each Borrower will, and will cause each of its Restricted Subsidiaries to,

(a) Keep any property either owned or operated by any Borrower or its Restricted Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests,

(c) Promptly notify Agent of any release of which any Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Borrower or its Restricted Subsidiaries and take any Remedial Actions required under applicable Environmental Laws to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law, and

(d) Promptly, but in any event within fifteen Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of a Borrower or its Restricted Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against a Loan Party or its Subsidiaries, which, if adversely decided, could reasonably be expected to have a Material Adverse Effect, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority which could reasonably be expected to have a Material Adverse Effect.

5.10. **Disclosure Updates**. Each Borrower will, promptly and in no event later than five Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to Agent or the Lenders (other than any projections, budgets, estimates, forward-looking statements, information of a general economic nature, general information about the Borrowers' industry or general market data) contained, at the time it was furnished (when taken as a whole), any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein (when taken as a whole) not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11. **Formation of Subsidiaries**. Each Borrower will, at the time that any Borrower forms any direct or indirect Subsidiary that is not an Immaterial Subsidiary, acquires any direct or indirect Subsidiary after the Closing Date that is not an Immaterial Subsidiary, or at any time when any direct or indirect Subsidiary of a Borrower that previously was an Immaterial Subsidiary is no longer an Immaterial Subsidiary, within 30 days of such event (or such later date as permitted by Agent in its sole discretion) (a) cause such new Subsidiary (i) if such Subsidiary is a Domestic Subsidiary and Administrative Borrower requests, subject to the consent of Agent, that such Domestic Subsidiary be joined as a Borrower hereunder, to provide to Agent a Joinder to this Agreement, and (ii) to provide to Agent a joinder to the Guaranty and Security Agreement, in each case, together with such other security agreements (including upon Agent's request, Mortgages with respect to any Real Property owned in fee of such new Subsidiary with a fair market value of greater than $1,000,000), as well as appropriate financing statements (and with respect to all property subject to a Mortgage, fixture filings), all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) subject to the terms of the Intercreditor Agreement, provide, or cause the applicable Loan Party to provide, to Agent a pledge agreement (or an addendum to the Guaranty and Security Agreement) and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary in form and substance reasonably satisfactory to Agent (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) provide to Agent all other documentation, including the Governing Documents of such Subsidiary and, if requested by Agent, one or more opinions of counsel reasonably satisfactory to Agent, which, Agent shall reasonably request with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance, flood certification documentation or other documentation with respect to all Real Property owned in fee and subject to a Mortgage). Any document, agreement, or instrument

executed or issued pursuant to this Section 5.11 shall constitute a Loan Document. Notwithstanding anything contained in this Agreement or any other Loan Document, no Foreign Subsidiary shall be obligated to become a Guarantor or grant any Liens on its assets or property to the extent and for so long as the incurrence of such guarantee or granting of Liens would reasonably be expected to give rise to or result in: any breach or violation of (1) statutory limitations, (2) corporate benefit, financial assistance, fraudulent preference, thin capitalization rules or capital maintenance rules, (3) binding and enforceable guidance and coordination rules or laws, or (4) corporate governance and fiduciary duty, rules or regulations (or analogous restrictions) in the case of each of the above clauses (1) through (4) of the applicable jurisdiction such Foreign Subsidiary is domiciled.

5.12. **Further Assurances**. Each Loan Party will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in all of the assets of each of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) (other than any assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to Section 3 of the Guaranty and Security Agreement), at Agent's request, to create and perfect Liens in favor of Agent in any Real Property acquired by any other Loan Party with a fair market value in excess of $1,000,000, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents, in each case subject to the last sentence of Section 5.11. To the maximum extent permitted by applicable law, if any Borrower or any other Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time not to exceed 30 Business Days (or such longer period as may be acceptable to Agent) following the request to do so, each Borrower and each other Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of the Loan Parties, including all of the outstanding capital Equity Interests of each direct or indirect Subsidiary of Anagram LLC (in each case, other than with respect to any assets expressly excluded from the Collateral (as defined in the Guaranty and Security Agreement) pursuant to Section 3 of the Guaranty and Security Agreement). Notwithstanding anything to the contrary contained herein (including Section 5.11 hereof and this Section 5.12) or in any other Loan Document, (x) Agent shall not accept delivery of any Mortgage from any Loan Party unless each of the Lenders has received 45 days prior written notice thereof and Agent has received confirmation from each Lender that such Lender has completed its flood insurance diligence, has received copies of all flood insurance documentation and has confirmed that flood insurance compliance has been completed as required by the Flood Laws or as otherwise satisfactory to such Lender and (y) Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary

individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

5.13. **Compliance with ERISA and the IRC.** In addition to and without limiting the generality of Section 5.8, each Borrower will, and will cause each of its Restricted Subsidiaries to, (a) comply in all material respects with applicable provisions of ERISA and the IRC with respect to all Employee Benefit Plans, (b) without the prior written consent of Agent and the Required Lenders, not take any action or fail to take action the result of which could result in a Borrower, Restricted Subsidiary or ERISA Affiliate incurring a material liability to the PBGC or to a Multiemployer Plan (other than to pay contributions or premiums payable in the ordinary course), (c) allow any facts or circumstances to exist with respect to one or more Employee Benefit Plans that, in the aggregate, reasonably could be expected to result in a Material Adverse Effect, (d) not participate in any prohibited transaction that could result in other than a *de minimis* civil penalty excise tax, fiduciary liability or correction obligation under ERISA or the IRC, (e) operate each Employee Benefit Plan in such a manner that will not incur any material tax liability under the IRC (including Section 4980B of the IRC), and (f) furnish to Agent upon Agent's written request such additional information about any Employee Benefit Plan for which any Borrower, Restricted Subsidiary or ERISA Affiliate could reasonably expect to incur any material liability. With respect to each Pension Plan (other than a Multiemployer Plan) except as could not reasonably be expected to result in liability to the Borrowers and their Restricted Subsidiaries, the Borrowers, Restricted Subsidiaries and the ERISA Affiliates shall (i) satisfy in full and in a timely manner, without incurring any late payment or underpayment charge or penalty and without giving rise to any Lien, all of the contribution and funding requirements of the IRC and of ERISA, and (ii) pay, or cause to be paid, to the PBGC in a timely manner, without incurring any late payment or underpayment charge or penalty, all premiums required pursuant to ERISA.

5.14. **Location of Inventory; Chief Executive Office**. Each Borrower will, and will cause each of its Restricted Subsidiaries to, keep (a) their Inventory (other than in-transit Inventory) only at the locations identified on Schedule 4.25 to this Agreement (provided that Borrowers may amend Schedule 4.25 to this Agreement so long as such amendment occurs by written notice to Agent not less than ten days prior to the date on which such Inventory is moved to such new location and so long as Agent has consented to such amendment and such new location is within the continental United States), and (b) their respective chief executive offices only at the locations identified on Schedule 7 to the Guaranty and Security Agreement.

5.15. **OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws**. Each Borrower will, and will cause each of its Restricted Subsidiaries to, comply with all applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Borrowers and its Restricted Subsidiaries shall implement and maintain in effect policies and procedures reasonably designed to ensure compliance by the Borrowers and their Restricted Subsidiaries and their respective directors, officers, employees, agents and Affiliates with applicable Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

6. NEGATIVE COVENANTS.

Each Borrower covenants and agrees that, until the termination of all of the Commitments and the payment in full of the Obligations:

6.1. **Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock**.

(a) The Borrowers shall not, and shall not permit any of their Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and the Borrowers shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock;

(b) Section 6.1(a) shall not apply to:

(i) Indebtedness incurred pursuant to the this Agreement;

(ii) the incurrence by any Borrower and any Guarantor of (x) Indebtedness represented by the principal amount of First Lien Notes issued pursuant to the First Lien Indenture (including pay in kind interest described in the First Lien Indenture), and any guarantees thereof and (y) the Second Lien Notes represented by the principal amount of Second Lien Notes issued pursuant to the Second Lien Indenture (including any pay in kind interest described in the Second Lien Indenture) and any guarantees thereof;

(iii) Indebtedness of the Borrowers and their Restricted Subsidiaries in existence on the Closing Date (other than Indebtedness described in clauses (A) and (B) of this Section 6.1(b)) and listed on Schedule 6.1(b) hereto;

(iv) (x) Indebtedness (including Financing Lease Obligations) incurred or Disqualified Stock issued by any Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, in each case, in the ordinary course of business, whether or not consistent with past practice, to finance the purchase, lease, replacement or improvement of property (real or personal) or Equipment, through the direct purchase of assets and (y) any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refund, refinance or replace any other Indebtedness incurred or Disqualified Stock or Preferred Stock issued pursuant to this clause (iv); provided that the aggregate amount of Indebtedness incurred and Disqualified Stock and Preferred Stock issued pursuant to clauses (x) and (y) of this clause (iv) does not exceed, at any one time outstanding, $5,000,000, which amount shall increase by (A) on the first anniversary of the Issue Date, $5,000,000 (such that at any one time outstanding upon and after such date, the aggregate amount of Indebtedness incurred and Disqualified Stock and Preferred Stock issued pursuant to clauses (x) and (y) of this clause (iv) may not exceed $10,000,000 as of such date) and (B) on the second anniversary of the Issue Date, an additional $5,000,000 (such that at any one time outstanding upon and after such date, the aggregate amount of Indebtedness incurred and Disqualified Stock and Preferred Stock issued pursuant to clauses (x) and (y) of this clause of this clause (iv) may not exceed $15,000,000 as of such date);

(v) Indebtedness incurred by any Borrower or any of their Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees, bankers acceptances, warehouse receipts or similar instruments issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers'

compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; provided, however, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 Business Days following such drawing or incurrence;

(vi) Indebtedness of any Borrower to a Guarantor; provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any Guarantor ceasing to be a Guarantor or any other subsequent transfer of any such Indebtedness (except to a Borrower or another Guarantor or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vi);

(vii) Indebtedness of a Guarantor to a Borrower or another Guarantor; provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Guarantor ceasing to be a Guarantor or any subsequent transfer of any such Indebtedness (except to a Borrower or another Guarantor or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vii);

(viii) shares of Preferred Stock of (a) a Restricted Subsidiary that is a Guarantor issued to any Borrower or another Restricted Subsidiary that is a Guarantor or (b) a Restricted Subsidiary that is not a Guarantor issued to any Borrower or another Restricted Subsidiary that is not a Guarantor, in each case, provided that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to any Borrower or another of its Restricted Subsidiaries) shall be deemed in each case to be an issuance of such shares of Preferred Stock not permitted by this clause (viii);

(ix) Hedge Obligations (excluding Hedge Obligations entered into for speculative purposes) in an aggregate amount not to exceed $4,000,000 at any time outstanding;

(x) obligations (including reimbursement obligations with respect to letters of credit, bank guarantees or other similar instruments) in respect of performance, bid, appeal and surety bonds and performance and completion guarantees or obligations in respect of letters of credit related thereto provided by any Borrower or any of their Restricted Subsidiaries in the ordinary course of business or consistent with past practice or industry practices;

(xi) the incurrence by any Borrower or any Restricted Subsidiary of Indebtedness or issuance of Disqualified Stock or the issuance by any Restricted Subsidiary of Preferred Stock which serves to extend, replace, refund, refinance, renew or defease any Indebtedness incurred or Disqualified Stock or Preferred Stock issued as permitted under clause (iii) and this clause (xi) of this Section 6.1(b) or any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to so extend, replace, refund, refinance or renew such Indebtedness, Disqualified Stock or Preferred Stock including additional Indebtedness incurred or Disqualified Stock or Preferred Stock issued to pay premiums (including tender premiums), penalties and

similar amounts, defeasance costs and fees and expenses (including original issue discount, upfront fees or similar fees) in connection therewith (the "Refinancing Indebtedness") prior to its respective maturity; provided, however, that such Refinancing Indebtedness:

(A) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is incurred or issued which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness, Disqualified Stock or Preferred Stock being extended, replaced, refunded, refinanced, renewed or defeased (or requires no or nominal payments in cash prior to the date that is 91 days after the Latest Maturity Date);

(B) to the extent such Refinancing Indebtedness extends, replaces, refunds, refinances, renews or defeases (x) Indebtedness subordinated to or *pari passu* with Obligations or any guarantee thereof, such Refinancing Indebtedness is subordinated to or *pari passu* with the Obligations or such guarantee at least to the same extent as the Indebtedness being extended, replaced, refunded, refinanced, renewed or defeased or (y) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;

(C) shall not include (x) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of any Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of any Borrower or (y) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of any Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor;

(D) is incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced plus premium and fees incurred in connection with such refinancing;

(E) shall not be secured by any Liens other than Liens on the property or assets already securing the Indebtedness being refinanced hereunder, and any such new Liens and such Refinancing Indebtedness shall be subject to the same Lien priorities as the existing Indebtedness; and

(F) shall not have a cash interest rate that is in excess of 25% of the cash interest rate of the Indebtedness being refinanced hereunder.

(xii) (A) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided that such Indebtedness is extinguished within five Business Days of its incurrence and (B) Indebtedness in respect of any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements entered into in the ordinary course of business;

(xiii) Indebtedness of any Borrower or any of its Restricted Subsidiaries supported by a letter of credit or bank guarantee issued pursuant to any Credit Facility, including

any letter of credit or bank guarantee issued to facilitate the importation of Inventory (but not in order to finance the purchase of such Inventory), in each case in a principal amount not in excess of the stated amount of such letter of credit or bank guarantee;

(xiv) (A) any guarantee by any Borrower or a Restricted Subsidiary of Indebtedness or other obligations of any Restricted Subsidiary so long as the incurrence of such Indebtedness incurred by such Restricted Subsidiary is permitted under the terms of this Agreement, or (B) any guarantee by a Restricted Subsidiary of Indebtedness of the Borrowers under this Agreement, the First Lien Indenture or the Second Lien Indenture;

(xv) Indebtedness of any Borrower or any of its Restricted Subsidiaries consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;

(xvi) the incurrence of Indebtedness arising out of any Sale and Lease-Back Transaction with respect to property built or acquired by the Borrowers or any Restricted Subsidiary after the Closing Date incurred in the ordinary course of business or consistent with industry practice;

(xvii) Indebtedness of the Borrowers or any Restricted Subsidiary to the extent that Net Cash Proceeds thereof are promptly applied to (a) prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f), so long as the Commitments are terminated at the same time, or (b) satisfy and discharge any other Indebtedness in accordance with the terms thereof;

(xviii) Indebtedness of (A) any Borrower or any Guarantor incurred to finance a Permitted Acquisition or (B) Persons that are acquired by any Borrower or any Guarantor (including by way of merger or amalgamation with or into any Borrower or a Guarantor in accordance with the terms of this Agreement) in connection with a Permitted Acquisition; provided, however, that after giving effect to such transaction and the incurrence of such Indebtedness, the Borrowers and their Restricted Subsidiaries on a consolidated basis (x) would have had a Fixed Charge Coverage Ratio of at least 2.00 to 1.00 or (y) the Fixed Charge Coverage Ratio would be equal to or greater than the Fixed Charge Coverage Ratio immediately prior to such transaction; and provided, further, that the amount of Indebtedness that may be incurred by the Borrowers and the Guarantors pursuant to clause (A) of this clause (xviii) shall not exceed $20,000,000 at any one time outstanding;

(xix) Indebtedness or Disqualified Stock of any Borrower and Indebtedness, Disqualified Stock or Preferred Stock of any Guarantor not otherwise permitted hereunder in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (xix), does not at any one time outstanding exceed $7,500,000;

(xx) Indebtedness (including Acquired Indebtedness) or Disqualified Stock of Borrowers or the incurrence or issuance of Indebtedness (including Acquired Indebtedness), Disqualified Stock or Preferred Stock by any Restricted Subsidiary, so long as the

Consolidated Total Debt Ratio of Borrowers for Borrowers' most recently ended four fiscal quarters for which internal financial statements are available preceding the date on which such additional Indebtedness, Disqualified Stock or Preferred Stock is incurred or issued would be no greater than 4.75 to 1.00, in each case determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom); provided that the amount of Indebtedness (including Acquired Indebtedness), Disqualified Stock and Preferred Stock that may be incurred or issued, as applicable, pursuant to the foregoing by Restricted Subsidiaries that are not Loan Parties shall not exceed the greater of (x) $5,000,000 and (y) 20% of EBITDA of Borrowers for the most recently ended four consecutive fiscal quarters for which internal financial statements are available (calculated on a *pro forma* basis), at any one time outstanding; and provided further that any Indebtedness incurred pursuant to this clause (xx) may not mature on or prior to the Maturity Date; and

(xxi) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xx) above.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock for purposes of this Section 6.1. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; provided that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 6.1.

For purposes of determining compliance with any Dollar-denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the Dollar-equivalent principal amount or liquidation preference, as applicable, of Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower Dollar equivalent), in the case of revolving credit debt; provided that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued, to extend, replace, refund, refinance or renew other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount or liquidation preference, as applicable, of such Refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (x) the principal amount or liquidation preference, as applicable, of such Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being extended replaced, refunded, refinanced or renewed plus (y) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount of any Indebtedness, Disqualified Stock or Preferred Stock incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The Borrowers shall not, and shall not permit any Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is contractually subordinated or junior in right of payment to any Indebtedness of such Borrower or such Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the Obligations or such Guarantor's guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of such Borrower or such Guarantor, as the case may be.

For purposes of this Agreement Indebtedness that is unsecured is not deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured, and senior indebtedness is not deemed to be subordinated or junior to any other senior indebtedness merely because it has a junior priority lien with respect to the same collateral or because it is secured by different collateral or issued or guaranteed by other obligors.

6.2. **Limitation on Restricted Payments.**

(a) The Borrowers shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly (all such payments and other actions set forth in clauses (i) through (iv) below being collectively referred to as "Restricted Payments"):

(i) declare or pay any dividend or make any other payment or any distribution on account of any Borrower's or any of their Restricted Subsidiaries' Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger or consolidation (other than: (A) dividends or distributions by any Borrower payable solely in Equity Interests (other than Disqualified Stock) of such Borrower or in options, warrants or other rights to purchase such Equity Interests (other than Disqualified Stock); or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, a Borrower or a Restricted Subsidiary receives at least their pro rata share of such dividend or distribution in accordance with their Equity Interests in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of any Borrower, any direct or indirect parent of any Borrower or any Subsidiaries, including in connection with any merger or consolidation, in each case held by Persons other than any Borrower or a Restricted Subsidiary;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness, any First Lien Indebtedness or any Second Lien Indebtedness of any Borrower or any Restricted Subsidiary; or

(iv) make any Restricted Investment.

(b) Section 6.2(a) shall not prohibit:

(i) (A) any Restricted Payment either (1) in exchange for Qualified Capital Stock of any Borrower or (2) through the application of the net cash proceeds received by any Borrower from (x) a substantially concurrent sale of Qualified Capital Stock of such Borrower or (y) a contribution to the Capital Stock of such Borrower not representing an interest in Disqualified Stock, in each case, not received from a Restricted Subsidiary of such Borrower;

(ii) the voluntary prepayment, purchase, defeasance, redemption or other acquisition or retirement for value of any Subordinated Indebtedness solely in exchange for, or through the application of net cash proceeds of a substantially concurrent sale, other than to a Restricted Subsidiary of any Borrower, of Refinancing Indebtedness for such Subordinated Indebtedness;

(iii) [**Reserved**];

(iv) the declaration and payment of dividends or distributions by the Borrowers and the Restricted Subsidiaries to, or the making of loans or advances to, any of their respective direct or indirect parent companies in amounts required for any direct or indirect parent companies to pay, in each case, for any taxable period in which the Borrowers and/or any of their Subsidiaries are members of a consolidated, combined or similar income tax group of which a direct or indirect parent of the Borrowers is the common parent (a "Tax Group"), consolidated Tax liabilities of such Tax Group that are attributable to the taxable income of the Borrowers and/or their Subsidiaries; provided that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the lesser of (1) the amount that the Borrowers and their Subsidiaries would have been required to pay in respect of federal, foreign, state and local income Taxes in the aggregate if such entities were corporations paying Taxes separately from any Tax Group on a standalone basis (it being understood and agreed that if any Borrower or any Subsidiary pays any such federal, foreign, state or local income Taxes directly to such taxing authority, that a Restricted Payment in duplication of such amount shall not be permitted to be made pursuant to this clause) and (2) the amount of income Taxes actually paid by such Tax Group in respect of such taxable period;

(v) so long as no Event of Default or Default is in existence or would be caused thereby, other Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (v) not to exceed $1,000,000 in any one year period following the Issue Date, with unused amounts carried over to subsequent one year periods;

(vi) the repurchase, redemption or other acquisition or retirement for value of any First Lien Notes pursuant to an "Asset Sale Offer" (as defined in the First Lien Indenture) pursuant to the terms of the First Lien Indenture, or the Second Lien Notes pursuant to an "Asset Sale Offer" (as defined in the Second Lien Indenture) pursuant to the terms of the Second Lien Indenture; and

(vii) the prepayment of any First Lien Indebtedness, so long as the Payment Conditions have been satisfied; and, once the First Lien Indebtedness has been paid in

full, the prepayment of any Second Lien Indebtedness, so long as the Payment Conditions have been satisfied.

The amount of any Restricted Payments not in cash will be the Fair Market Value on the date of such Restricted Payment of the property, assets or securities proposed to be paid, transferred or issued by the Borrowers or the relevant Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment.

6.3. **Dividend and Other Payment Restrictions Affecting Borrowers and Restricted Subsidiaries**. The Borrowers shall not, and shall not permit any of their Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Borrower or any such Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to any Borrower or any of their Restricted Subsidiaries that is a Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits; or (ii) pay any Indebtedness owed to any Borrower or to any Restricted Subsidiary that is a Guarantor;

(b) make loans or advances to any Borrower or to any Restricted Subsidiary; or

(c) sell, lease or transfer any of its properties or assets to any Borrower or to any Restricted Subsidiary;

except in each case for such encumbrances or restrictions existing under or by reason of:

(i) contractual encumbrances or restrictions in effect on the Closing Date related to existing indebtedness listed on Schedule 6.1(c) attached hereto;

(ii) this Agreement, the First Lien Documents and the Second Lien Documents;

(iii) purchase money obligations for property acquired and Financing Lease Obligations in the ordinary course of business that impose restrictions of the nature discussed in clause (c) above on the property or assets so acquired;

(iv) applicable law or any applicable rule, regulation or order;

(v) any agreement or other instrument of a Person acquired by any Borrower or any of its Restricted Subsidiaries pursuant to a Permitted Acquisition in existence at the time of such Permitted Acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries;

(vi) contracts or agreements for the sale of assets, including any restrictions with respect to a Subsidiary of any Borrower pursuant to an agreement that has been

entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary, permitted under this Agreement;

(vii) Secured Indebtedness otherwise permitted to be incurred pursuant to Sections 6.1 and 6.6 that apply to the assets securing such Indebtedness and/or the Restricted Subsidiaries incurring or guaranteeing such Indebtedness;

(viii) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(ix) customary provisions in any joint venture agreement and other similar agreement entered into in the ordinary course of business and, in each case, permitted under this Agreement;

(x) customary provisions contained in leases, subleases, licenses or sublicenses or asset sale agreements and other similar agreements, in each case, entered into in the ordinary course of business;

(xi) any encumbrances or restrictions of the type referred to in Sections 6.3(a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i) through (x) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrowers, no more restrictive in any material respect with respect to such encumbrances and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(xii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(xiii) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under Section 6.4 pending the consummation of such sale, transfer, lease or other disposition;

(xiv) customary restrictions and conditions contained in the document relating to any Lien so long as (A) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (B) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this clause (xiv); and

(xv) agreements entered into in connection with a Sale and Lease-Back Transaction entered into in the ordinary course of business or consistent with industry practice.

For purposes of determining compliance with this Section 6.3, (1) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (2) the subordination of loans or advances made

to a Borrower or a Restricted Subsidiary to other Indebtedness incurred by such Borrower or such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

6.4. **Asset Sales**. The Borrowers shall not, and shall not permit any of their Restricted Subsidiaries to, consummate an Asset Sale (including a Sale and Lease-Back Transaction), unless:

(a) such Borrower or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of; and

(b) at least 75% of the consideration therefor received by such Borrower or Restricted Subsidiary, as the case may be, is in the form of Cash Equivalents; provided that the amount of:

(i) any liabilities (as shown on such Borrower's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or, if incurred or increased subsequent to the date of such balance sheet, such liabilities that would have been shown on such Borrower's or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such incurrence or increase had taken place on or prior to the date of such balance sheet, as determined by the Borrowers), contingent or otherwise, of such Borrower or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Obligations, that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee and for which the Borrowers and all of its Restricted Subsidiaries have been validly released by all creditors in writing, and

(ii) any securities, notes or other obligations or assets received by such Borrower or such Restricted Subsidiary from such transferee that are converted by such Borrowers or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received) within 30 days following the closing of such Asset Sale,

shall be deemed to be Cash Equivalents for the purposes of this Section 6.4(a); and

(c) such Asset Sale does not include any intellectual property, permits or licenses (or any rights therein) that are material to the conduct of the business of the Borrowers and their Restricted Subsidiaries, taken as a whole, or any Eligible Accounts or Eligible Inventory.

6.5. **Transactions with Affiliates.**

(a) The Borrowers shall not, and shall not permit any of their Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of their properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of any Borrower (each of the foregoing, an "Affiliate Transaction") unless:

(i) with respect to transactions or series of transactions involving aggregate payments or consideration of less than $1,000,000, in the good faith judgment of senior management of the Administrative Borrower, as evidenced by an Officer's Certificate delivered to

Agent, such Affiliate Transaction is on terms that are not less favorable to the relevant Borrower or Restricted Subsidiary than those that would have been obtained in a comparable transaction by such Borrower or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(ii) with respect to transactions or series of transactions involving aggregate payments or consideration in excess of $1,000,000, the Borrowers deliver to Agent (A) a resolution adopted by the majority of the disinterested Board of Directors of Anagram LLC approving such Affiliate Transaction and a related Officer's Certificate certifying that such Affiliate Transaction is on terms that are not less favorable to the relevant Borrower or Restricted Subsidiary than those that would have been obtained in a comparable transaction by such Borrower or such Restricted Subsidiary with an unrelated Person on an arm's-length basis or (B) if there are no disinterested members of the Board of Directors of Anagram LLC, a resolution adopted by all of the members of the Board of Directors of Anagram LLC approving such Affiliate Transaction and a related Officer's Certificate certifying that such Affiliate Transaction is on terms that are not less favorable to the relevant Borrower or Restricted Subsidiary than those that would have been obtained in a comparable transaction by such Borrower or such Restricted Subsidiary with an unrelated Person on an arm's-length basis; and

(iii) with respect to transactions or series of transactions involving aggregate payments or consideration in excess of $15,000,000, the Borrowers deliver to Agent a letter from an Independent Financial Advisor stating that such transaction is fair to such Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms are not less favorable, when taken as a whole, to such Borrower or such relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by such Borrower or such Restricted Subsidiary with an unrelated Person on an arm's-length basis.

(b) Section 6.5(a) shall not apply to the following:

(i) transactions between or among any of the Borrowers or any of their Restricted Subsidiaries otherwise permitted under this Agreement;

(ii) Restricted Payments permitted by Section 6.2;

(iii) the payment of reasonable and customary fees and reimbursement of reasonable expenses and compensation paid to, and indemnities provided on behalf of or for the benefit of, future, present or former employee, officer, director, member of management or consultant (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of any of the foregoing) of any Borrower or any of its Restricted Subsidiaries;

(iv) any agreement as in effect as of the Closing Date and listed on Schedule 6.5 hereto, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not disadvantageous to the Lenders as compared to the applicable agreement as in effect on the Closing Date) or any transaction contemplated thereby as determined in good faith by the Borrowers;

(v) transactions with customers, clients, suppliers, contractors, or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or that are consistent with past

practice and otherwise in compliance with the terms of this Agreement which are fair to the Borrowers and their Restricted Subsidiaries, in the reasonable determination of the Board of Directors of the Administrative Borrower, or are on terms at least as favorable as would reasonably have been obtained at such time from an unaffiliated party on an arm's length basis;

(vi) (A) payments or loans (or cancellation of loans) or advances to employees, officers, directors, members of management or consultants (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of any of the foregoing) of any Borrower or any of its Restricted Subsidiaries in an aggregate outstanding amount not to exceed $500,000; provided, that Borrowers and the Restricted Subsidiaries may make such payments, loans or advances in excess of $500,000 if the Payment Conditions are satisfied, and (B) employment agreements, severance arrangements, stock option plans and other similar arrangements with such employees, officers, directors, members of management or consultants (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of any of the foregoing) which, in each case, are made in the ordinary course of business and approved by a majority of the disinterested members of the Board of Directors of the Administrative Borrower in good faith;

(vii) any contribution to the capital of the Borrowers or any Restricted Subsidiary;

(viii) the issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans approved by a majority of the disinterested members of the Board of Directors of the Administrative Borrower in good faith;

(ix) transactions undertaken in good faith (as certified by a responsible financial or accounting officer of the Administrative Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrowers and their Subsidiaries and not for the purpose of circumventing any covenant set forth in this Agreement; and

(x) transactions pursuant to or required by the Intra-Company Agreements.

6.6. **Liens**. The Borrowers shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness or any related guarantee, on any asset or property of the Borrowers or any Restricted Subsidiary, or any income or profits therefrom, or assign or convey any right to receive income therefrom.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 6.6.

6.7. **Intra-Company Agreements**. The Intra-Company Agreements (a) shall not be amended, modified or otherwise changed, or the rights of the Borrowers or the obligations of the counterparties thereto waived, in each case, in any manner that is adverse in any material

respect to the Borrowers or the Lenders, and (b) shall remain at all times in full force and effect and the Borrowers and Parent will adhere to all terms and provisions thereof in all material respects.

6.8. **Limitation on Holding Company Activities**.

(a) Anagram LLC shall not (i) incur, directly or indirectly, any Indebtedness other than (A) the Obligations or (B) other Indebtedness permitted under this Agreement; (ii) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (A) the Liens created in connection with the execution and delivery of the Loan Documents or (B) Permitted Liens on the Collateral; (iii) engage in any business activity or own any material assets other than (A) holding 100% of the Capital Stock of the Company and, indirectly, any other Subsidiary of the Company, (B) performing its Obligations under this Agreement and other Indebtedness, Liens and guarantees permitted hereunder, (C) such activities necessary to maintain its corporate existence, and (D) activities incidental to the foregoing clauses (iii)(A) through (iii)(C); or (iv) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

(b) AIHI shall not (i) incur, directly or indirectly, any Indebtedness other than (A) the Obligations or (B) other Indebtedness permitted under this Agreement; (ii) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (A) the Liens created in connection with the execution and delivery of the Loan Documents or (B) Permitted Liens on the Collateral; (iii) engage in any business activity or own any material assets other than (A) performing its Obligations under this Agreement and other Indebtedness, Liens and guarantees permitted hereunder, (B) such activities necessary to maintain its corporate existence, and (C) activities incidental to the foregoing clauses (iii)(A) and (iii)(B); or (iv) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

6.9. **Restrictions on Fundamental Changes**. Borrowers will not, and will not permit any of Restricted Subsidiary to,

(a) other than in order to consummate a Permitted Acquisition, enter into any merger, amalgamation, consolidation, reorganization, or recapitalization, or reclassify its Equity Interests, except for (i) any merger, amalgamation or consolidation between Loan Parties; provided, that if such merger, amalgamation or consolidation involves a Borrower, such Borrower must be the surviving entity thereof, (ii) any merger, amalgamation or consolidation between a Loan Party and a Subsidiary of such Loan Party that is not a Loan Party so long as such Loan Party is the surviving entity thereof, and (iii) any merger, amalgamation or consolidation between Subsidiaries of any Loan Party that are not Loan Parties,

(b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of any Loan Party with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than any Borrower) or any of its Wholly-Owned Subsidiaries so long as all of the assets (including any interest in any Equity Interests) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, or (iii) the liquidation or dissolution of a Subsidiary of any Loan Party that is not a Loan Party (other than

any such Subsidiary the Equity Interests of which (or any portion thereof) is subject to a Lien in favor of Agent) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of a Loan Party that is not liquidating or dissolving,

(c) suspend or cease operating a substantial portion of its or their business, except as permitted pursuant to clauses (a) or (b) above or in connection with a transaction permitted under Section 6.4, or

(d) change its classification/status for U.S. federal income tax purposes.

6.10. **Nature of Business**. Borrowers will not, and will not permit any of the Restricted Subsidiaries to, make any change in the nature of its or their material line of business as conducted as of the Closing Date or acquire any properties or assets that are not reasonably related to or ancillary to, or a reasonable development, extension or expansion of, the conduct of the same general type of such business activities; provided, that the foregoing shall not prevent Borrowers and their Restricted Subsidiaries from engaging in any business that is reasonably related or ancillary to, or a reasonable development, extension or expansion of, its or their business.

6.11. **Accounting Methods**. Borrowers will not, and will not permit any of their Restricted Subsidiaries to, modify or change their fiscal year or their method of accounting (other than as may be required to conform to GAAP).

6.12. **Use of Proceeds**. Borrowers will not, and will not permit any of their Restricted Subsidiaries to, use the proceeds of any Loan made hereunder for any purpose other than (a) on the Closing Date, to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes; provided that (x) no part of the proceeds of the Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors, (y) no part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of applicable Sanctions by any Person, and (z) that no part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

6.13. **Inventory with Bailees**. Borrowers will not, and will not permit any of their Restricted Subsidiaries to, store their Inventory at any time with a bailee, warehouseman, or similar party except as set forth on Schedule 4.25 (as such Schedule may be amended in accordance with Section 5.14).

6.14. **Employee Benefits**. Except as would not reasonably be expected to have a Material Adverse Effect, Borrowers will not, and will not permit their Restricted Subsidiaries to:

(a) terminate, or permit any ERISA Affiliate to terminate, any Pension Plan in a manner, or take any other action with respect to any Pension Plan, which could reasonably be expected to result in any liability of any Borrower, Restricted Subsidiary or ERISA Affiliate to the PBGC;

(b) fail to make, or permit any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Pension Plan, agreement relating thereto or applicable Law, any Borrower, Restricted Subsidiary or ERISA Affiliate is required to pay;

(c) permit to exist, or allow any ERISA Affiliate to permit to exist, any accumulated funding deficiency within the meaning of section 302 of ERISA or section 412 of the Code, whether or not waived, with respect to any Pension Plan;

(d) acquire, or permit any ERISA Affiliate to acquire, an interest in any Person that causes such Person to become an ERISA Affiliate with respect to any Borrower or any Restricted Subsidiary or with respect to any ERISA Affiliate if such Person sponsors, maintains, or contributes to, or has any liability with respect to (i) any Pension Plan or (ii) any Multiemployer Plan;

(e) contribute to or assume an obligation to contribute to, or permit any ERISA Affiliate to contribute to or assume an obligation to contribute to, any Multiemployer Plan not set forth on Schedule 4.10; or

(f) amend, or permit any ERISA Affiliate to amend, a Pension Plan resulting in a material increase in current liability such that any Borrower, Restricted Subsidiary or ERISA Affiliate is required to provide security to such Pension Plan under the IRC.

6.15. **Certain Amendments**. Directly or indirectly, amend, modify, or change any of the terms or provisions of the Governing Documents of any Loan Party if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of the Lenders.

7. FINANCIAL COVENANTS.

(a) **Fixed Charge Coverage Ratio**. The Borrowers shall maintain a Fixed Charge Coverage Ratio, calculated for each 12 month period ending on the first day of any Covenant Testing Period and the last day of each fiscal month occurring until the end of any Covenant Testing Period (including the last day thereof), in each case of at least 1.10 to 1.00.

(b) **Minimum Liquidity**. The Borrowers shall at all times maintain Unrestricted Cash on a consolidated basis of not less than $1,000,000. The Borrowers shall deliver to Agent not later than the applicable dates on which quarterly and annual financial statements of the Borrowers relating to such period are due in accordance with this Agreement, an Officer's Certificate confirming compliance with this Section 7(b). The Borrowers shall deliver to Agent,

within five Business Days after any Default in compliance with this Section 7(b), an Officer's Certificate specifying such Default and what action the Borrowers are taking or propose to take with respect thereto.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1. **Payments**. If Borrowers fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of three Business Days, (b) all or any portion of the principal of the Loans, or (c) any amount payable to Issuing Bank in reimbursement of any drawing under a Letter of Credit.

8.2. **Covenants**. If any Borrower or any of its Restricted Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.6, 5.2 (other than as provided for under Section 8.2(e) below), 5.3 (solely if any Borrower is not in good standing in its jurisdiction of organization or incorporation), or 5.7 (solely if any Borrower refuses to allow Agent or its representatives or agents to visit any Borrower's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss Borrowers' affairs, finances, and accounts with officers and employees of any Borrower, subject to the limitations set forth in Section 5.7) of this Agreement, (ii) Section 6 of this Agreement, (iii) Section 7(a) of this Agreement, or (iv) Section 7 of the Guaranty and Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.1, 5.6, 5.10 or 5.14 of this Agreement and such failure continues for a period of five days thereafter;

(c) fails to perform or observe any covenant or other agreement contained in Section 5.13 of this Agreement and such failure continues for a period of fifteen days thereafter;

(d) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if any Borrower is not in good standing in its jurisdiction of organization or incorporation), 5.5, 5.8, 5.12 or 5.13 of this Agreement and such failure continues for a period of fifteen days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent;

(e) fails to timely deliver a Compliance Certificate as required to be delivered pursuant to Schedule 5.1(c) or a Borrowing Base Certificate and accompanying materials pursuant to Schedule 5.2(a)-(i), and in either case such failure continues for a period of one Business Day;

(f) fails to perform or observe the covenant contained in Section 7(b) of this Agreement, and such failure continues for a period of four Business Days; or

(g) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of thirty days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower, or (ii) the date on which written notice thereof is given to Borrowers by Agent.

8.3. **Judgments**. If one or more judgments, orders, or awards for the payment of money involving an aggregate amount in excess of $10,000,000 (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Borrower or any of its Restricted Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of sixty consecutive days at any time after the entry of any such judgment, order, or award during which (i) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (ii) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award.

8.4. **Voluntary Bankruptcy, etc**. If an Insolvency Proceeding is commenced by a Borrower or any of its Restricted Subsidiaries (other than an Immaterial Subsidiary).

8.5. **Involuntary Bankruptcy, etc**. If an Insolvency Proceeding is commenced against a Borrower or any of its Restricted Subsidiaries (other than an Immaterial Subsidiary) and any of the following events occur: (a) such Borrower or such Restricted Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within sixty calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Borrower or such Restricted Subsidiary, or (e) an order for relief shall have been issued or entered therein.

8.6. **Default Under Other Agreements**. If there is (a) an "Event of Default" under the First Lien Indenture, (b) an "Event of Default" under the Second Lien Indenture, (c) a default in one or more agreements to which a Borrower or any of its Restricted Subsidiaries is a party with one or more third Persons relative to a Borrower's or any of its Restricted Subsidiaries' Indebtedness involving an aggregate amount of $10,000,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Borrower's or its Restricted Subsidiary's obligations thereunder (provided that, if such default has been cured, waived or otherwise no longer in existence, the Event of Default resulting from this clause (c) shall be deemed to be cured, waived and no longer in existence), or (d) a default in or an involuntary early termination of one or more Hedge Agreements to which a Borrower or any of its Restricted Subsidiaries is a party involving an aggregate amount of $10,000,000 or more.

8.7. **Representations, etc**. If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof.

8.8. **Guaranty**. If the obligation of any Guarantor under the guaranty contained in the Guaranty and Security Agreement is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement or the terms of the Guaranty and Security Agreement or with the consent of the applicable Lenders pursuant to Section 14.1) or if any Guarantor repudiates or revokes or purports to repudiate or revoke any such guaranty.

8.9. **Security Documents**. If the Guaranty and Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, (except to the extent of Permitted Liens) first priority Lien on the Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, the Intercreditor Agreement or the Guaranty and Security Agreement, (b) with respect to Collateral other than ABL Facility Priority Lien Collateral, a portion of such Collateral that is not material or (c) with respect to ABL Facility Priority Lien Collateral the aggregate value of which, for all such ABL Facility Priority Lien Collateral, does not exceed at any time, $250,000; provided, that is shall not constitute an Event of Default under this Section 8.9 if such failure or cessation is with respect to Collateral other than ABL Facility Priority Lien Collateral until such failure or cessation continues for a period of thirty (30) days.

8.10. **Loan Documents**. The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent or pursuant to the terms of the Loan Documents) be declared to be null and void, or a proceeding shall be commenced by any Loan Party, or by any Governmental Authority having jurisdiction over any Loan Party, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny that such Loan Party has any liability or obligation purported to be created under any Loan Document (other than as a result of the discharge of such Loan Document in accordance with the terms thereof).

8.11. **Change of Control**. A Change of Control shall occur, whether directly or indirectly.

8.12. **ERISA**. The occurrence of any of the following events: (a) any Borrower, Restricted Subsidiary or ERISA Affiliate fails to make full payment when due of all amounts which any Borrower, Restricted Subsidiary or ERISA Affiliate is required to pay as contributions, installments, or otherwise to or with respect to a Pension Plan or Multiemployer Plan, and such failure could reasonably be expected to result in liability in excess of $1,000,000, (b) an accumulated funding deficiency or funding shortfall in excess of $1,000,000 occurs or exists, whether or not waived, with respect to any Pension Plan, individually or in the aggregate, (c) a Notification Event, which could reasonably be expected to result in liability in excess of $250,000, either individually or in the aggregate, or (d) any Borrower, Restricted Subsidiary or ERISA Affiliate completely or partially withdraws from one or more Multiemployer Plans and incurs

Withdrawal Liability in excess of $1,000,000 in the aggregate, or fails to make any Withdrawal Liability payment when due.

9. RIGHTS AND REMEDIES.

9.1. **Rights and Remedies**. Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

(a) by written notice to Borrowers, (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower, and (ii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice Borrowers will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(b) by written notice to Borrowers, declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Revolving Lender to make Revolving Loans, (ii) the obligation of the Swing Lender to make Swing Loans, and (iii) the obligation of Issuing Bank to issue Letters of Credit; and

(c) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrowers or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents, shall automatically become and be immediately due and payable and Borrowers shall automatically be obligated to repay all of such Obligations in full (including Borrowers being obligated to provide (and Borrowers agree that they will provide) (1) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations in respect of drawings that may subsequently occur under issued and outstanding Letters of Credit and (2) Bank Product Collateralization to be held as security for Borrowers' or their Subsidiaries' obligations in respect of outstanding Bank Products), without presentment, demand, protest, or notice or other requirements of any kind, all of which are expressly waived by Borrowers.

9.2. **Remedies Cumulative**. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The

Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Default or Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. WAIVERS; INDEMNIFICATION.

10.1. **Demand; Protest; etc**. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which any Borrower may in any way be liable.

10.2. **The Lender Group's Liability for Collateral**. Each Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Loan Parties.

10.3. **Indemnification**. Each Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, the Issuing Bank, each other Letter of Credit Related Person, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable and documented fees and disbursements of attorneys (limited in the case of counsel to the reasonable and documented fees and expenses of one counsel to Agent and one counsel to the rest of the Lender Group, as well as any necessary local counsel), experts, or consultants and all other reasonable and documented out-of-pocket costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (subject to the limitations above in respect of counsel) (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided, that Borrowers shall not be liable for costs and expenses (including attorneys' fees) of any Lender (other than Wells Fargo in its capacity as agent) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby (provided, that except in the case of any Letter of Credit Related Person, the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders that do not involve any acts or omissions of any Loan Party, or (ii) disputes solely between or among the Lenders and their respective Affiliates that do not involve any acts or omissions of any Loan Party; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders unless the dispute involves an act or omission of a Loan Party) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any

claims for Taxes, which shall be governed by Section 16, other than Taxes which relate to primarily non-Tax claims), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Loans or issuance of any Letters of Credit hereunder, or the use of the proceeds of the Loans or the Letters of Credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Borrower or any of its Restricted Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Borrower or any of its Restricted Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). Anything in the foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any (i) material breach of any Indemnified Person of their obligations (or the obligations of such Indemnified Person's Agent-Related Persons) under the Loan Documents or (ii) Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Person or its Affiliates, officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, EXCEPT AS SET FORTH ABOVE, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. **NOTICES.**

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to any Loan Party or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to any Loan Party: **ANAGRAM HOLDINGS, LLC**
80 Grasslands Road
Elmsford, New York 10523
Attn: Todd Vogensen
Email: tvogensen@partycity.com

with copies to:

ANAGRAM HOLDINGS, LLC
7700 Anagram Drive
Eden Prairie, Minnesota 55344
Attn: Legal General Counsel
Email: iheller@amscan.com

and

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP One Manhattan West
New York, New York 10001
Attn: Sarah Ward, Esq.
Email: sarah.ward@skadden.com

If to Agent:

WELLS FARGO BANK, NATIONAL ASSOCIATION
90 S. 7th Street – 16th Floor
Minneapolis, Minnesota 55402
Attn: Loan Portfolio Manager
Fax No.: (855) 444-7982

with copies to:

GOLDBERG KOHN LTD.
55 East Monroe Street, Suite 3300
Chicago, Illinois 60603
Attn: David L. Dranoff, Esq.
Fax No.: (312) 863-7439
Email: david.dranoff@goldbergkohn.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail 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 email or other written acknowledgment).

12. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND**

THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).**

(c) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

(d) **EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR**

PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) **NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, THE SWING LENDER, ANY OTHER LENDER, ISSUING BANK, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.**

13. **ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.**

13.1. **Assignments and Participations**.

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees, so long as such prospective assignee is an Eligible Assignee (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed) of:

(A) Borrowers; provided, that no consent of Borrowers shall be required (1) if a Default or Event of Default has occurred and is continuing or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) or a Related Fund of a Lender; provided further, that Borrowers shall be deemed to have consented to a proposed assignment unless they object thereto by written notice to Agent within five Business Days after having received notice thereof; and

(B) Agent, Swing Lender, and Issuing Bank.

(ii) Assignments shall be subject to the following additional conditions:

(A) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of $5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender, or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such

new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000),

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(C) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agent may continue to deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrowers and Agent by such Lender and the Assignee,

(D) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of $3,500, and

(E) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire").

(b) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such

documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons other than a Disqualified Institution (unless an Event of Default has occurred and is continuing) (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decrease the amount or postpone the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights

of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to any Loan Party and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement to secure obligations of such Lender, including any pledge in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law; provided, that no such pledge shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Loans (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Loans to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Loans to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the

principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the registered note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. Subject to Section 13.1(j) below, no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register to the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2. **Successors**. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Borrower is required in connection with any such assignment.

14. AMENDMENTS; WAIVERS.

14.1. Amendments and Waivers.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by any Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c),

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders)),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) amend, modify, or eliminate Section 3.1 or 3.2,

(vi) amend, modify, or eliminate Section 15.11,

(vii) other than as permitted by Section 15.11, the Guaranty and Security Agreement or the Intercreditor Agreement or in connection with any transaction permitted pursuant to Section 6.4, release or contractually subordinate Agent's Lien in and to any of the Collateral,

(viii) amend, modify, or eliminate the definitions of "Required Lenders", Supermajority Lenders or "Pro Rata Share",

(ix) other than in connection with a merger, consolidation, amalgamation, liquidation, wind up, dissolution, sale or other disposition of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(x) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i), (ii) or (iii), or

(xi) amend, modify, or eliminate any of the provisions of Section 13.1 with respect to assignments to, or participations with, Persons who are Loan Parties or Affiliates of a Loan Party;

(b) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders), or

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders.

(c) No amendment, waiver, modification, elimination, or consent shall amend, without written consent of Agent, Borrowers and the Supermajority Lenders, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts, Eligible Finished Goods Inventory, Eligible Raw Material Inventory and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount, or change Section 2.1(c).

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Bank, or any other rights or duties of Issuing Bank under this Agreement or the other Loan Documents, without the written consent of Issuing Bank, Agent, Borrowers, and the Required Lenders.

(e) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders.

(f) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Loan Party, shall not require consent by or the agreement of any Loan Party, (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) through (iii) that affect such Lender, and (iii) any amendment contemplated by Section 2.12(c)(i) of this Agreement in connection with a Benchmark Transition Event or an Early Opt-in Election shall be effective as contemplated by such Section 2.12(c)(i) hereof.

14.2. **Replacement of Certain Lenders**.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least five Business Days prior irrevocable notice (or such shorter period as Agent may agree), may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") with one or more Replacement Lenders, and the Non-Consenting Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof and (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit). If the Non-Consenting Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender hereunder and under the other Loan Documents, the Non-Consenting Lender shall remain obligated to make the Non-Consenting Lender's or Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3. **No Waivers; Cumulative Remedies**. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1. **Appointment and Authorization of Agent**. Each Lender hereby designates and appoints Wells Fargo as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or

the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, or to take any other action with respect to any Collateral or Loan Documents which may be necessary to perfect, and maintain perfected, the security interests and Liens upon Collateral pursuant to the Loan Documents, (c) make Revolving Loans, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute payments and proceeds of the Collateral as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to any Loan Party, the Obligations, the Collateral, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2. **Delegation of Duties**. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3. **Liability of Agent**. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by any Loan Party or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any Officer's Certificate or other certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations

hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of any Loan Party or its Subsidiaries. No Agent-Related Person shall have any liability to any Lender, and Loan Party or any of their respective Affiliates if any request for a Loan, Letter of Credit or other extension of credit was not authorized by the applicable Borrower. Agent shall not be required to take any action that, in its opinion or in the opinion of its counsel, may expose it to liability or that is contrary to any Loan Document or applicable law or regulation.

15.4. **Reliance by Agent**. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, Officer's Certificate, other certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5. **Notice of Default or Event of Default**. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrowers referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6. **Credit Decision**. Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of any Loan Party and its

Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of each Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7. **Costs and Expenses; Indemnification**. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by the Loan Parties, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified

Liabilities; provided, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8. **Agent in Individual Capacity**. Wells Fargo and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though Wells Fargo were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include Wells Fargo in its individual capacity.

15.9. **Successor Agent**. Agent may resign as Agent upon 30 days (ten days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrowers (unless such notice is waived by Borrowers or a Default or Event of Default has occurred and is continuing) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as Issuing Bank or the Swing Lender, such resignation shall also operate to effectuate its resignation as Issuing Bank or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrowers, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders (excluding Agent) may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default

has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10. **Lender in Individual Capacity**. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with any Loan Party and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding a Loan Party or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of such Loan Party or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11. **Collateral Matters**.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by the Loan Parties of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Loan Party or any of its Subsidiaries owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Loan Party or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (a) consent to the sale of, credit bid, or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including

Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Equity Interests of the any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration; provided, that Bank Product Obligations not entitled to the application set forth in Section 2.4(b)(iii)(J) shall not be entitled to be, and shall not be, credit bid, or used in the calculation of the ratable interest of the Lenders and Bank Product Providers in the Obligations which are credit bid. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate (by contract or otherwise) any Lien granted to or held by Agent on any property under any Loan Document (a) to the holder of any Permitted Lien on such property if such Permitted Lien secures purchase money

Indebtedness (including Financing Lease Obligations) which constitute Indebtedness permitted hereunder and (b) to the extent Agent has the authority under this Section 15.11 to release its Lien on such property. Notwithstanding the provisions of this Section 15.11, Agent shall be authorized, without the consent of any Lender and without the requirement that an asset sale consisting of the sale, transfer or other disposition having occurred, to release any security interest in any building, structure or improvement located in an area determined by the Federal Emergency Management Agency to have special flood hazards provided that such building, structure or improvement has an immaterial fair market value.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) (i) to verify or assure that the Collateral exists or is owned by a Loan Party or any of its Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise expressly provided herein.

15.12. **Restrictions on Actions by Lenders; Sharing of Payments**.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to any Loan Party or its Subsidiaries or any deposit accounts of any Loan Party or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to

the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13. **Agency for Perfection**. Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14. **Payments by Agent to the Lenders**. All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. **Concerning the Collateral and Related Loan Documents**. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents, including without limitation the Intercreditor Agreement. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16. **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information**. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting any Loan Party or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any field examination will inspect only specific information regarding the Loan Parties and their Subsidiaries and will rely

significantly upon Borrowers' and their Subsidiaries' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Loan Parties and their Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by any Loan Party or its Subsidiaries to Agent that has not been contemporaneously provided by such Loan Party or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from any Loan Party or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrowers the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from such Loan Party or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. **Several Obligations; No Liability**. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor

to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. WITHHOLDING TAXES.

16.1. **Payments**. All payments made by any Loan Party under any Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as otherwise required by applicable law, and in the event any deduction or withholding of Taxes is required, the applicable withholding agent shall make the requisite withholding, promptly pay over to the applicable Governmental Authority the withheld tax, and furnish to Agent as promptly as possible after the date the payment of any such Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the Loan Parties. Furthermore, if any such Tax is an Indemnified Tax or an Indemnified Tax is so levied or imposed, the Loan Parties agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein. The Loan Parties will promptly pay any Other Taxes or reimburse Agent for such Other Taxes upon Agent's demand. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnitee). The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of Agent, and the repayment of the Obligations.

16.2. **Exemptions**.

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) and the Administrative Borrower on behalf of all Borrowers one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrowers

within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, Form W-8BEN-E or Form W-8IMY (with proper attachments as applicable);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or Form W-8BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (including a withholding statement and copies of the tax certification documentation for its beneficial owner(s) of the income paid to the intermediary, if required based on its status provided on the Form W-8IMY); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent and Borrowers, to deliver to Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, or the providing of or delivery of such forms in the Lender's reasonable judgment would not subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender (or its Affiliates); provided, further, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent and Administrative Borrower (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent and Administrative Borrower (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent and Administrative Borrower will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(e) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable due diligence and reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) at the time or times prescribed by law and at such time or times reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Agent (or, in the case of a Participant, the Lender granting the participation) as may be necessary for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

16.3. **Reductions**.

(a) If a Lender or a Participant is subject to an applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the Internal Revenue Service or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of,

withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4. **Refunds**. If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes to which the Loan Parties have paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to the Administrative Borrower on behalf of the Loan Parties (but only to the extent of payments made, or additional amounts paid, by the Loan Parties under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that the Loan Parties, upon the request of Agent or such Lender, agrees to repay the amount paid over to the Loan Parties (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent or Lender hereunder as finally determined by a court of competent jurisdiction) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Loan Parties or any other Person or require Agent or any Lender to pay any amount to an indemnifying party pursuant to Section 16.4, the payment of which would place Agent or such Lender (or their Affiliates) in a less favorable net after-Tax position than such Person would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid.

17. GENERAL PROVISIONS.

17.1. **Effectiveness**. This Agreement shall be binding and deemed effective when executed by each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof.

17.2. **Section Headings**. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3. **Interpretation**. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and

shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4. **Severability of Provisions**. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5. **Bank Product Providers**. Each Bank Product Provider in its capacity as such shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents. It is understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (*less* any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although Borrowers are not required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6. **Debtor-Creditor Relationship**. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary

relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. **Counterparts; Electronic Execution**. This Agreement and any notices delivered under this Agreement, may be executed by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Agent reserves the right, in its sole discretion, to accept, deny, or condition acceptance of any electronic signature on this Agreement or on any notice delivered to Agent under this Agreement. This Agreement and any notices delivered under this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument. Delivery of an executed counterpart of a signature page of this Agreement and any notices as set forth herein will be as effective as delivery of a manually executed counterpart of the Agreement or notice. The foregoing shall apply to each other Loan Document mutatis mutandis.

17.8. **Revival and Reinstatement of Obligations; Certain Waivers**. If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist, and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated, or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

17.9. **Confidentiality**.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that all information received from any Loan Party relating to the Loan Parties, their Subsidiaries or their businesses, operations or assets other than any such information that is available to Agent, Issuing Bank or any Lender on a non-confidential basis prior to disclosure by any Loan Party and other information pertaining to this Agreement routinely provided by arrangers to data service providers, including league table providers, that serve the lending industry (provided that, in the case of information received from the Loan Parties after the Closing Date, such information is clearly identified at the time of delivery as confidential) ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis; provided that such Person shall be responsible for its respective Lender Group Representatives' compliance with this paragraph, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers); provided, that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided, that (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided, that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided,

that prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of Agent.

(c) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") available to the Lenders by posting the communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10. **Survival**. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied

upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, Issuing Bank, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been terminated.

17.11. **Patriot Act; Due Diligence**. Each Lender that is subject to the requirements of the Patriot Act hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.12. **Integration**. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.13. **Anagram LLC as Agent for Borrowers**. Each Borrower hereby irrevocably appoints Anagram LLC as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to Revolving Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), and (c) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient

and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of the Administrative Borrower, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.13 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

17.14. **Acknowledgement and Consent to Bail-In of Affected Financial Institutions**. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

17.15. **Acknowledgement Regarding Any Supported QFCs**. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit

Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States). In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BORROWERS:

ANAGRAM HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Name: Todd Vogensen
Title: Authorized Officer

ANAGRAM INTERNATIONAL, INC.,
a Minnesota corporation

By: _____
Name: Todd Vogensen
Title: Vice President, Treasurer

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Agent, as Sole Lead Arranger, as Sole Book Runner and as a Lender

By: _____
Name: Anwar S. Young
Its Authorized Signatory

Exhibit 2

DIP Notes Indenture

Execution Version

Anagram Holdings, LLC

and

Anagram International, Inc.,

as Debtors and Debtors-in-Possession under Chapter 11 of the Bankruptcy Code and as DIP Issuers hereunder,

The Guarantors Party Hereto From Time to Time,

as DIP Guarantors,

and

GLAS Trust Company LLC,

as DIP Trustee and Collateral Agent

Senior Secured Superpriority Debtor-In-Possession Notes due 2024

INDENTURE

Dated as of November 14, 2023

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This DIP INDENTURE dated as of November 14, 2023 among Anagram Holdings, LLC, a Delaware limited liability company, as issuer ("Anagram LLC"), Anagram International, Inc., a Minnesota corporation, as co-issuer ("Anagram International" and, together with Anagram LLC, the "DIP Issuers " or the "Company"), the affiliates of the DIP Issuers from time to time party hereto as guarantors (the "DIP Guarantors"), and GLAS Trust Company LLC, a limited liability company organized and existing under the laws of the State of New Hampshire, as trustee (together with its successors and permitted assigns, in such capacity, the "DIP Trustee") and as collateral agent (together with its successors and permitted assigns, in such capacity, the "Collateral Agent") for the benefit of the DIP Secured Parties (as defined herein). The Company is a wholly-owned subsidiary of Anagram LLC. Anagram International is a wholly-owned subsidiary of Anagram LLC. The DIP Issuers are wholly-owned subsidiaries of Party City Holdco Inc. ("PCHI").

On November 8, 2023 (the "Petition Date"), the DIP Issuers and certain of their direct and indirect subsidiaries and Affiliates, each as debtors-in-possession (collectively, the "Debtors") commenced voluntary cases (the "Chapter 11 Cases") under Chapter 11 of the Bankruptcy Code (as defined herein) in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

Prior to the Petition Date, certain lenders and noteholders provided financing to the DIP Issuers and their Affiliates pursuant to (i) that certain Indenture, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition 1L Indenture"), (ii) that certain Indenture, dated as of July 30, 2020 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition 2L Indenture"), and (iii) that certain Credit Agreement dated as of May 7, 2021 (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the "Prepetition ABL Credit Agreement"). The outstanding Prepetition ABL Obligations will be gradually rolled-up in accordance with, and subject to, the Bankruptcy Court DIP Order, by application of all proceeds of ABL Priority Collateral required to be deposited on or after the Petition Date into the collection account pursuant to the Prepetition ABL Credit Agreement until "rolled up", refinanced and repaid in full, subject to the DIP Issuers' ability to borrow under the DIP ABL Facility (the date that the Prepetition ABL Obligations are rolled-up in full pursuant to the Bankruptcy Court DIP Order, the "ABL Roll-Up Date").

On the Petition Date, (i) the outstanding aggregate principal amount of Notes and PIK Notes (each, as defined in the Prepetition 1L Indenture) and unpaid reimbursement obligations under the Prepetition 1L Indenture was approximately $125,331,399.84, plus accrued, unpaid and uncapitalized interest, fees, costs and expenses and all other Prepetition 1L Obligations under the Prepetition 1L Notes Documents, (ii) the outstanding aggregate principal amount of Notes and PIK Notes (each, as defined in the Prepetition 2L Indenture) and unpaid reimbursement obligations under the Prepetition 2L Indenture was approximately $108,900,584.61, plus accrued, unpaid and uncapitalized interest, fees, costs and expenses and all other Prepetition 2L Obligations under the Prepetition 2L Notes Documents and (iii) the outstanding principal balance of Loans (as defined in the Prepetition ABL Credit Agreement) and unpaid reimbursement obligations under the Prepetition ABL Credit Agreement was approximately $6,206,692.20, plus interest, fees, costs and expenses and all other Prepetition ABL Obligations under the Prepetition ABL Loan Documents.

The Prepetition Secured Obligations under the Prepetition Debt Documents are secured by security interests and liens in substantially all of the existing and after-acquired assets of the DIP Issuers and the DIP Guarantors as more fully set forth in the Prepetition Debt Documents, and such security interests are perfected, and, with certain exceptions as described in the Prepetition Debt Documents, have priority over all other security interests.

The DIP Issuers have requested, and, upon the terms and subject to the conditions set forth in this DIP Indenture and the DIP Note Purchase Agreement, the initial DIP Noteholders have agreed to severally purchase from the DIP Issuers, DIP Notes (including Additional DIP Notes) in an aggregate principal amount of $22.0 million, consisting of: (i) $10.0 million aggregate principal amount of DIP Notes issuable upon the Interim DIP Order Entry Date and (ii) $12.0 million aggregate principal amount of Additional DIP Notes issuable upon the Final DIP Order Entry Date, each to fund the working capital requirements of the DIP Issuers, the DIP Guarantors and their Subsidiaries during the pendency of the Chapter 11 Cases, in each case, pursuant to and in accordance with the Approved Budget.

The DIP Issuers and the DIP Guarantors have agreed to secure all of their DIP Obligations under the DIP Notes (including any Additional DIP Notes) by granting to the DIP Trustee, for the benefit of the DIP Trustee and the other DIP Secured Parties, a security interest in and lien upon all of their existing and after-acquired personal and real property. The DIP Notes will be secured by (i) a senior priming lien on the Prepetition Notes Priority Collateral and (ii) a lien that ranks senior to the liens securing the Prepetition 1L Obligations and Prepetition 2L Obligations, but junior to the liens securing the ABL Obligations, on the ABL Priority Collateral.

The DIP Issuers' and the DIP Guarantors' business is a mutual and collective enterprise and the DIP Issuers and the DIP Guarantors believe that the DIP Notes (including any Additional DIP Notes) and other financial accommodations to the DIP Issuers under this DIP Indenture will enhance the aggregate borrowing powers of the DIP Issuers and facilitate the administration of the Chapter 11 Cases and their credit relationship with the Prepetition 1L Noteholders, the Prepetition 2L Noteholders, the ABL Agent and the ABL Lenders, all to the mutual advantage of the DIP Issuers and the DIP Guarantors.

Each of the DIP Issuers and the DIP Guarantors acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the DIP Issuers as provided in this DIP Indenture.

The initial DIP Noteholders' willingness to extend financial accommodations to the DIP Issuers, and the Collateral Agent's willingness to administer the DIP Issuers' and DIP Guarantors' collateral security therefor, on a combined basis as more fully set forth in this DIP Indenture and the other DIP Documents, is done as an accommodation to the DIP Issuers and the DIP Guarantors and at the DIP Issuers' and the DIP Guarantors' request and in furtherance of the DIP Issuers' and the DIP Guarantors' mutual and collective enterprise.

All capitalized terms used in this DIP Indenture, including in these recitals, shall have the meanings ascribed to them in Sections 1.01 and 1.02, and, for purposes of this DIP Indenture and the other DIP Documents, the rules of construction set forth in Section 1.03 shall govern. All Schedules, Exhibits, Annexes, and other attachments hereto, or expressly identified in this DIP Indenture, are incorporated by reference, and taken together with this DIP Indenture, shall constitute a single agreement. These recitals shall be construed as part of this DIP Indenture.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions. Unless the context otherwise requires, for all purposes under this DIP Indenture and any DIP Security Document (as defined below), (i) references to

the DIP Notes include any related Additional DIP Notes (as defined below) and (ii) references to the "principal amount" of DIP Notes includes any increase in the principal amount of outstanding DIP Notes as a result of the issuance of Additional DIP Notes.

"ABL Adequate Protection Liens" has the meaning set forth in the Bankruptcy Court DIP Order.

"ABL Agent" means the Prepetition ABL Agent and the DIP ABL Agent, as applicable.

"ABL DIP Facility" has the meaning set forth in the Bankruptcy Court DIP Order.

"ABL Facility" means the Prepetition ABL Facility until the DIP Roll-Up Date and, thereafter, the ABL DIP Facility.

"ABL Lenders" means the Prepetition ABL Lenders until the DIP Roll-Up Date and, thereafter, the DIP ABL Lenders.

"ABL Obligations" means the Prepetition ABL Obligations until the DIP Roll-Up Date and, thereafter, the DIP ABL Obligations.

"ABL Priority Collateral" has the meaning set forth in the Bankruptcy Court DIP Order.

"ABL Roll-Up Date" has the meaning set forth in the recitals.

"Acquired Indebtedness" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is consolidated, merged or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging or amalgamating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"Ad Hoc Group" has the meaning set forth in the Bankruptcy Court DIP Order.

"Additional DIP Notes" has the meaning set forth in Section 2.16(a).

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "*control*" (including, with correlative meanings, the terms "*controlling*," "*controlled by*" and "*under common control with*"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Applicable Rate" means 13.0% per annum.

"Approved Budget" has the meaning assigned to such term in Section 4.02(f).

"Approved Sale" has the meaning assigned to such term in Section 6.01(z).

"Asset Sale" means:

(1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Lease-Back Transaction) of the DIP Issuers or any of their Restricted Subsidiaries (each referred to in this definition as *a* "*disposition*"); or

(2) the issuance or sale of Equity Interests of any Restricted Subsidiary, whether in a single transaction or a series of related transactions;

in each case, other than:

(a) any disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) surplus, obsolete, damaged or worn out property or equipment in the ordinary course of business or any disposition of inventory or goods (or other assets) held for sale in the ordinary course of business and (iii) property no longer used or useful in the conduct of business of the DIP Issuers and their Restricted Subsidiaries;

(b) the disposition of all or substantially all of the assets of the DIP Issuers in a manner permitted pursuant to Section 5.01 or any disposition that constitutes a Change of Control;

(c) the making of any Restricted Payment that is permitted to be made, and is made, under Section 4.04;

(d) any disposition of assets of the DIP Issuers or any Restricted Subsidiary or issuance or sale of Equity Interests of any Restricted Subsidiary in any transaction or series of transactions with an aggregate Fair Market Value of less than $250,000;

(e) any disposition of property or assets or issuance of securities by the DIP Guarantors to a DIP Issuer or by a DIP Issuer or the DIP Guarantors to a DIP Issuer or the DIP Guarantors; *provided* that in the case of a sale of DIP Collateral, the transferee shall cause such amendments, supplements or other instruments to be executed, filed and recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien on the DIP Collateral owned by or transferred to the transferee, together with such financing statements or comparable documents as may be required to perfect any security interests in such DIP Collateral, which may be perfected by the filing of a financing statement or a similar document under the Uniform Commercial Code or other similar statute or regulation of the relevant states or jurisdictions; to the extent allowable under Section 1031 of the Internal Revenue Code of 1986, as amended, any exchange of like property (excluding any boot thereon) for use in a Similar Business;

(f) (i) the lease, assignment, sublease, license or sublicense of any real or personal property in the ordinary course of business and (ii) the termination of leases in the ordinary course of business;

(g) any disposition arising from foreclosure, casualty, condemnation or any similar action or transfers by reason of eminent domain with respect to any property or other asset of the DIP Issuers or any of the Restricted Subsidiaries or exercise of termination rights under any lease, sublease, license, sublicense, concession or other agreement;

(h) dispositions in connection with the granting of a Lien that is permitted under Section 4.12;

(i) the issuance by a Restricted Subsidiary of Preferred Stock or Disqualified Stock that is permitted under Section 4.03;

(j) any grant in the ordinary course of business of any license of patents, trademarks, know-how or any other intellectual property, including, but not limited to, grants of franchises or licenses, franchise or license master agreements and/or area development agreements; *provided* any such grants to Affiliates shall be treated as a disposition subject to the requirements of Section 4.07(a) hereof, and if such grant, when treated as a disposition subject to Section 4.07(a), is not in compliance with the requirements of Section 4.07(a), such grant shall constitute an "Asset Sale";

(k) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings;

(l) the discount of inventory, accounts receivable or notes receivable or the conversion of accounts receivable to notes receivable, in each case in the ordinary course of business;

(m) the abandonment of intellectual property rights in the ordinary course of business which in the reasonable good faith determination of the DIP Issuers are not material to the conduct of the business of the DIP Issuers and the Restricted Subsidiaries taken as a whole; *provided* that any such abandonments shall be treated as a disposition subject to the requirements of Section 4.07(a) hereof, and if such abandonment, when treated as a disposition subject to Section 4.07(a), is not in compliance with the requirements of Section 4.07(a) hereof, such abandonment shall constitute an "Asset Sale."

(n) licenses for the conduct of licensed departments within the DIP Issuers in the ordinary course of business;

(o) termination of Hedging Obligations pursuant to the terms of the documentation governing such Hedging Obligations;

(p) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind in the ordinary course of business;

(q) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements; and

(r) dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) an amount equal to the Net Proceeds of such disposition are promptly applied to the purchase price of such replacement property.

"Authenticating Agent" has the meaning set forth in Section 2.03.

"Bank Products" means any services or facilities on account of credit or debit cards, purchase cards or merchant services constituting a line of credit.

"Bankruptcy Code" means title 11 of the United States Code, as amended.

"Bankruptcy Court" has the meaning set forth in the recitals.

"Bankruptcy Court DIP Order" means the Interim DIP Order or the Final DIP Order, or both, as applicable.

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for relief of debtors.

"Budget Event" means the actual amount of aggregate cumulative operating disbursements during any Budget Testing Period exceeding the projected cumulative operating disbursements in the Approved Budget for such Budget Testing Period by more than a Permitted Variance.

"Budget Testing Date" means, with respect to the Approved Budget, 5:00 p.m. New York City time on the Thursday that is two full weeks occurring after the Petition Date and each Thursday thereafter.

"Budget Testing Period" means, the most recently ended four-week (or such shorter period after the Petition Date in the case of the first two Budget Testing Dates) period ending on the most recent Friday immediately prior to the Budget Testing Date.

"Business Day" means each day which is not a Legal Holiday.

"Calculation Agent" means an agent appointed by the DIP Issuers to calculate Term SOFR, which shall be the DIP Trustee.

"Capital Stock" means:

(1) in the case of a corporation, shares in the capital of such corporation;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;

(3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"Capitalized Software Expenditures" shall mean, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities) by a Person and its Subsidiaries during such period in respect of licensed or purchased software or internally developed software and enhancements that, in conformity with GAAP, are or are required to be reflected as capitalized costs on the consolidated balance sheet of such Person and such Subsidiaries.

"Carve-Out" has the meaning set forth in the Bankruptcy Court DIP Order.

"Cash Collateral" has the meaning set forth in the Bankruptcy Court DIP Order.

"Cash Equivalents" means:

(1) United States dollars;

(2) securities issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 24 months or less from the date of acquisition;

(3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus of not less than $250.0 million and permitted under clause (1) above;

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above, and in each case in United States dollars;

(5) commercial paper rated at least "A2" by Moody's or at least "A" by S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within 24 months after the date of creation thereof, and in each case in United States dollars;

(6) marketable short-term money market and similar securities having a rating of at least "A2" or "A" from either Moody's or S&P, respectively (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within 24 months after the date of creation thereof and in United States dollars;

(7) readily marketable direct obligations issued by any state, commonwealth or territory of the United States or any political subdivision or taxing authority thereof having an Investment Grade Rating from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency) with maturities of 24 months or less from the date of acquisition;

(8) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency) with maturities of 24 months or less from the date of acquisition and in each case in United States dollars;

(9) investments with average maturities of 12 months or less from the date of acquisition in money market funds rated "AAA-" (or the equivalent thereof) or better by S&P or "Aaa3" (or the equivalent thereof) or better by Moody's and in each case in United States dollars; and

(10) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (9) above.

Notwithstanding the foregoing, Cash Equivalents shall include amounts denominated in currencies other than United States dollars; *provided* that such amounts are converted into United States dollars as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

"Cash Management Services" means any of the following to the extent not constituting a line of credit: treasury and/or cash management services, including, without limitation, controlled disbursement services, foreign exchange facilities, deposit and other accounts and merchant services.

"Change of Control" means the occurrence of any of the following after the Initial Issue Date:

(1) [Reserved];

(2) the sale, lease or transfer, in one or a series of related transactions (other than by way of merger or consolidation), of all or substantially all of the assets of the DIP Issuers and their Subsidiaries, taken as a whole, to any Person; or

(3) the DIP Issuers become aware of (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) the acquisition by (i) any Person or (ii) Persons that are together (A) a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), or (B) are acting, for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), as a group, in a single transaction or in a related series of transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of more than 35% of the total voting power of the Voting Stock of either (x) the Company or (y) Anagram LLC. For purposes of this definition, a Person or group shall not be deemed to beneficially own Voting Stock subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Voting Stock in connection with the transactions contemplated by such agreement. Notwithstanding the foregoing, a transaction will not be deemed to be a Change of Control under this clause (3) if the DIP Issuers become direct or indirect wholly-owned subsidiaries of one or more holding companies (which may include PCHI in respect of the DIP Issuers) and immediately following that transaction no Person or group beneficially owns, directly or indirectly, more than or 35% of the Voting Stock of each such holding company.

"Chapter 11 Cases" has the meaning specified in the recitals hereto.

"Collateral Agent" has the meaning set forth in the recitals.

"Commitment" has the meaning set forth in the DIP Note Purchase Agreement.

"Committee Professionals" has the meaning set forth in the Bankruptcy Court DIP Order.

"Consolidated Depreciation and Amortization Expense" means, with respect to any Person for any period, the total amount of depreciation and amortization expense, including without limitation the amortization of intangible assets, deferred financing fees and Capitalized Software Expenditures, of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

"Consolidated Interest Expense" means, with respect to any Person for any period, without duplication, the sum of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted (and not added back) in computing Consolidated Net Income including (i) amortization of original issue discount resulting from the issuance of Indebtedness at

less than par, (ii) all commissions, discounts and other fees and charges owed with respect to letters of credit or bankers acceptances, (iii) non-cash interest payments (but excluding any non-cash interest expense attributable to the movement in the mark to market valuation of Hedging Obligations or other derivative instruments pursuant to GAAP), (iv) the interest component of Financing Lease Obligations, and (v) net payments, if any, made (less net payments, if any, received) pursuant to interest rate Hedging Obligations with respect to Indebtedness, and excluding (A) penalties and interest related to taxes, (B) amortization of deferred financing fees, debt issuance costs, discounted liabilities, commissions, fees and expenses, (C) any expensing of bridge, commitment and other financing fees, (D) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization accounting or, if applicable, acquisition accounting; *plus*

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; *less*

(3) interest income of such Person and its Restricted Subsidiaries for such period.

For purposes of this definition, interest on a Financing Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the DIP Issuers to be the rate of interest implicit in such Financing Lease Obligation in accordance with GAAP.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate of the Net Income, of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, and otherwise determined in accordance with GAAP; *provided*, *however*, that, without duplication,

(1) any after-tax effect of extraordinary, non-recurring or unusual gains or losses, including costs of and payments of legal settlements, fines, judgments or orders (less all fees and expenses relating thereto) shall be excluded,

(2) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period,

(3) any net after-tax gains, charges or losses with respect to disposed, abandoned, closed or discontinued operations (other than assets held for sale) and any accretion or accrual of discounted liabilities and with respect to facilities or distribution centers that have been closed during such period, shall be excluded,

(4) any after-tax effect of gains or losses (less all fees and expenses relating thereto) attributable to asset dispositions (including asset retirement costs) or returned surplus assets of any employee pension benefit plan other than in the ordinary course of business shall be excluded,

(5) the Net Income for such period of any Person that is not a Subsidiary, or that is accounted for by the equity method of accounting, shall be excluded; *provided* that Consolidated Net Income of the DIP Issuers shall be increased by the amount of dividends or distributions or other payments that are actually paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period by such Person,

(6) effects of fair value adjustments (including the effects of such adjustments pushed down to the DIP Issuers and their Restricted Subsidiaries) in the merchandise inventory, property and equipment, goodwill, intangible assets, deferred revenue, deferred rent, deferred franchise fees and debt line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of acquisition accounting in relation to any consummated acquisition and the amortization or

write-off or removal of revenue otherwise recognizable of any amounts thereof, net of taxes, shall be excluded or added back in the case of lost revenue,

(7) any after-tax effect of income (loss) from the early extinguishment or conversion of Indebtedness or Hedging Obligations or other derivative instruments shall be excluded,

(8) any impairment charge or asset write-up, write-off or write-down, in each case, pursuant to GAAP and the amortization of intangibles arising pursuant to GAAP shall be excluded,

(9) any non-cash compensation charge or expense, including any such charge or expense arising from the grant of stock appreciation or similar rights, stock options, restricted stock or other equity incentive programs shall be excluded,

(10) any fees and expenses incurred during such period, or any amortization or write-off thereof for such period in connection with any acquisition, Investment, Asset Sale, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Initial Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction shall be excluded,

(11) any net gain or loss resulting from currency translation gains or losses related to currency remeasurements of Indebtedness (including any net loss or gain resulting from hedge agreements for currency exchange risk) and any foreign currency translation gains or losses shall be excluded,

(12) the excess of (i) GAAP rent expense over (ii) actual cash rent paid, including the benefit of lease incentives shall be excluded and the excess of (A) actual cash rent paid, including the benefit of lease incentives, over (B) GAAP rent expense shall be included (in each case during such period due to the use of straight line rent for GAAP purposes), and

(13) any unrealized net gains and losses resulting from Hedging Obligations and the application of Statement of Financial Accounting Standards No. 133 shall be excluded.

In addition, to the extent not already included in the Net Income of such Person and its Restricted Subsidiaries, notwithstanding anything to the contrary in the foregoing, Consolidated Net Income shall include the amount of proceeds received from business interruption insurance and reimbursements of any expenses and charges that are covered by indemnification or other reimbursement provisions in connection with any Permitted Investment or any sale, conveyance, transfer or other disposition of assets permitted under this DIP Indenture.

"Consultants" means Jim Plutt and Jim Harrison, in their capacities as consultants pursuant to terms satisfactory to the Required DIP Noteholders.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent,

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

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

"Debtors" has the meaning set forth in the Bankruptcy Court DIP Order.

"Debtors' Professionals" has the meaning set forth in the Bankruptcy Court DIP Order.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default; *provided* that any Default that results solely from the taking of an action that would have been permitted but for the continuation of a previous Default will be deemed to be cured if such previous Default is cured prior to becoming an Event of Default.

"Depositary" means, with respect to the Securities issuable or issued in whole or in part in global form, the Person specified in Section 2.04 hereof as the Depositary with respect to the DIP Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this DIP Indenture.

"DIP ABL Agent" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP ABL Lenders" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP ABL Obligations" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP Collateral" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP Collateral and Guarantee Requirement" means, at any time, the requirement that:

(1) all DIP Obligations shall have been unconditionally guaranteed by the DIP Guarantors and each Subsidiary of the DIP Notes Parties that is not a DIP Issuer;

(2) the DIP Obligations, including the DIP Guarantee, shall have been secured by a first-priority security interest (subject to the Carve-Out in all respects and Liens permitted by Section 4.12) through the provisions of the Interim DIP Order and the Final DIP Order, as applicable, in (i) all the Equity Interests of the DIP Issuers and (ii) all Equity Interests of each direct, wholly owned Subsidiary that is directly owned by the DIP Notes Parties; and

(3) except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 4.12, or under any DIP Collateral Document or the Bankruptcy Court DIP Order, the DIP Obligations, including the DIP Guarantee, shall have been secured by a perfected first-priority (subject in all respects to the Carve-Out, the Bankruptcy Court DIP Order (including with respect to Lien priorities

set forth therein) and Liens permitted by Section 4.12) security interest (to the extent such security interest may be perfected by virtue of the Bankruptcy Court DIP Order or by filing financing statements under the Uniform Commercial Code or making any necessary filings for perfection with the United States Patent and Trademark Office or United States Copyright Office) in substantially all tangible and intangible personal property of the DIP Issuers and the DIP Guarantors (including accounts (other than deposit accounts, other bank or securities accounts), inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing), in each case, with the priority required by the DIP Collateral Documents and set forth in the Bankruptcy Court DIP Order, in each case subject to exceptions and limitations otherwise set forth in this DIP Indenture, the DIP Collateral Documents and the Bankruptcy Court DIP Order; provided that any such security interests in ABL Priority Collateral shall be subject to the terms of the Prepetition ABL Intercreditor Agreement and the Bankruptcy Court DIP Order.

The foregoing definition shall not require the perfection of pledges of or security interests in, or the obtaining of title insurance, surveys, abstracts or appraisals with respect to, particular assets if and for so long as, in the reasonable judgment of the Required DIP Noteholders and the DIP Issuers, the cost of perfecting such pledges or security interests in such assets or obtaining title insurance, surveys abstracts or appraisals in respect of such assets shall be excessive in view of the benefits to be obtained by the DIP Noteholders therefrom.

Each DIP Guarantee shall be released in accordance with Section 10.02(b).

"DIP Collateral Documents" means, collectively, the Bankruptcy Court DIP Order, the DIP Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the DIP Trustee, Collateral Agent or the DIP Noteholders pursuant to Section 7.1 of the DIP Note Purchase Agreement and Sections 4.19 or 4.22 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the DIP Secured Parties.

"DIP Documents" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP Facilities" means the DIP Notes and the Additional DIP Notes, or both of them together, as the context may require, and "DIP Facility" means any of them.

"DIP Guarantee" means the guarantee by the DIP Guarantors pursuant to Article 10.

"DIP Guarantors" means the parties described as such in the preamble and successors thereto.

"DIP Indenture" means this DIP Indenture as amended or supplemented from time to time.

"DIP Issuers" means the parties named as such in the preamble and successors thereto.

"DIP Noteholders" means each Holder or, with respect to "Required DIP Noteholders" and related definition, each Person holding Commitments.

"DIP Notes" or "Securities" shall have the meaning given to the term "DIP Notes" in the recitals.

"DIP Notes Party" means, collectively, the DIP Issuers and the DIP Guarantors from time to time party hereto.

"DIP Note Purchase Agreement" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP Obligations" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP Professional Fees" means all professional fees required to be paid by the Debtors in the Chapter 11 Cases, including without limitation the "DIP Notes Professional Fees" as set forth in the Bankruptcy Court DIP Order.

"DIP Secured Parties" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP Security Agreement" means that certain DIP First Lien Pledge and Security Agreement, dated as of the date hereof, by and among the DIP Issuers and the DIP Guarantors, as grantors, and the Collateral Agent, in the form of the Existing Security Agreement, and otherwise in such form and substance satisfactory to the DIP Notes Parties and Required DIP Noteholders (as amended, restated, amended and restated, supplemented, renewed, replaced or otherwise modified, in whole or part, from time to time, in accordance with its terms).

"DIP Security Documents" means the DIP Security Agreement and any one or more additional security agreements, pledge agreements, intellectual property security agreements, collateral assignments, intellectual property security agreements, mortgages, deeds of covenants, assignments of earnings and insurances, share pledges, share charges, collateral agency agreements, deeds of trust or other grants or transfers for security executed and delivered by the DIP Issuers or the DIP Guarantors to be entered into on the Initial Issue Date for such DIP Issuer or the DIP Guarantors, creating, or purporting to create, a Lien upon all or a portion of the DIP Collateral in favor of the Collateral Agent for the benefit of the DIP Secured Parties, in each case as amended, restated, amended and restated, supplemented, renewed, replaced or otherwise modified, in whole or part, from time to time, in accordance with its terms.

"DIP Superpriority Claims" has the meaning set forth in the Bankruptcy Court DIP Order.

"DIP Trustee" means the party named as such in the preamble until a successor replaces it and, thereafter, means the successor.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable, or upon the happening of any event, matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise or is redeemable at the option of the holder thereof (in each case other than solely as a result of a change of control or asset sale; *provided* that the relevant change of control or asset sale provisions, taken as a whole, are no more favorable to holders of such Capital Stock than the change of control and asset sale provisions applicable to the DIP Notes and any purchase requirement triggered thereby may not become operative until (or contemporaneously with) compliance with the asset sale and change of control provisions applicable to the Securities (including the purchase of any DIP Notes tendered pursuant thereto)), in whole or in part, in each case prior to the date 91 days after the earlier of the Maturity Date of the DIP Notes or the date the DIP Notes are no longer outstanding; *provided*, *further*, that if such Capital Stock is issued to any current or former employee or to any plan for the benefit of employees, directors, officers, members of management or consultants of the DIP Issuers or their Subsidiaries or by any such plan to such employees, directors, officers, members or management or consultants, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the

DIP Issuers or their Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's or consultant's termination, death or disability.

"Domestic Subsidiaries" shall mean all Subsidiaries of the DIP Issuers incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

"ERISA" has the meaning set forth in the DIP Note Purchase Agreement

"ERISA Affiliate" has the meaning set forth in the DIP Note Purchase Agreement

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

"Existing Security Agreement" means that certain First Lien Pledge and Security Agreement dated as of July 30, 2020, by and among the DIP Issuers as issuers, the DIP Guarantors as grantors and Ankura Trust Company, LLC as collateral trustee.

"Fair Market Value" means the price which could be negotiated in an arm's-length, free market transaction between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction, as reasonably determined in good faith (i) by senior management of the DIP Issuers in consultation with each Consultant or (ii), for determinations in excess of $250,000, the Board of Directors of Anagram LLC and evidenced by a board resolution.

"Final DIP Order" means the Final Order (as defined in the Bankruptcy Court DIP Order) approving the DIP Facility on a final basis.

"Final DIP Order Entry Date" means the date on which the Final DIP Order is entered on the docket of the Bankruptcy Court.

"Financing Lease Obligation" means, at the time any determination thereof is to be made, an obligation that is required to be accounted for as a finance lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP, including, without limitation, Accounting Standards Codification 842 and related accounting rules and regulations, as such may be amended or re-codified from time to time, which obligation effectively transfers control of the underlying asset and constitutes an in-substance financed purchase of an asset; *provided* that the amount of any Financing Lease Obligation shall be the amount thereof accounted for as a liability in accordance with GAAP; and *provided, further* and for avoidance of doubt, the term "Financing Lease Obligation" does not include obligations under any operating leases that do not effectively transfer control of the underlying asset and do not represent an in-substance financed purchase of an asset under GAAP, including, without limitation, Accounting Standards Codification 842 and related accounting rules and regulations, as such may be amended or re-codified from time to time, notwithstanding that GAAP and such accounting rules and regulations, such as Accounting Standards Codification 842, may require that such obligations be recognized on the balance sheet of such Person as a lease liability (along with the related right-of-use asset).

"Flood Insurance Laws" means, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973

as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto and (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto.

"GAAP" means generally accepted accounting principles in the United States which are in effect on the date hereof. For purposes of this DIP Indenture, the term "consolidated" with respect to any Person means such Person consolidated with its Restricted Subsidiaries.

"Government Securities" means money market funds invested 100% in securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the DIP Issuers thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depository receipt.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Grantor Supplement" means a supplement to the Security Agreement substantially in the form of Exhibit 1 attached to the Security Agreement.

"guarantee" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, commodity swap agreement, commodity cap agreement, commodity collar agreement, foreign exchange contract, currency swap agreement or similar agreement providing for the transfer or mitigation of interest rate, commodity price or currency risks either generally or under specific contingencies.

"Holder" means the Person in whose name a DIP Note is registered on the registrar's books.

"Indebtedness" means, with respect to any Person, without duplication:

(1) any indebtedness (including principal and premium) of such Person, whether or not contingent:

(a) in respect of borrowed money;

(b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof);

(c) representing the balance deferred and unpaid of the purchase price of any property (including Financing Lease Obligations), except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation, in each case accrued in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and is not paid after becoming due and payable, and (iii) any such obligations under ERISA or liabilities associated with customer prepayments; or

(d) representing any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than letters of credit (other than commercial letters of credit) and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; *provided*, *however*, that the amount of such Indebtedness will be the lesser of: (i) the Fair Market Value of such asset at such date of determination, and (ii) the amount of such Indebtedness of such other Person; *provided*, *however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include (A) Contingent Obligations incurred in the ordinary course of business and (B) deferred or prepaid revenues.

Notwithstanding anything in this DIP Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification Topic 815 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this DIP Indenture as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this DIP Indenture but for the application of this sentence shall not be deemed an incurrence of Indebtedness under this DIP Indenture.

"Initial Issue Date" has the meaning set forth in the DIP Note Purchase Agreement.

"Initial DIP Noteholders" means "Initial Purchasers" which has the meaning set forth for "Initial Purchasers" in the DIP Note Purchase Agreement.

"Interim DIP Order" has the meaning set forth in the DIP Note Purchase Agreement.

"Interim DIP Order Entry Date" has the meaning set forth in the DIP Note Purchase Agreement.

"Intra-Company Agreements" means (i) the services agreement for the provision of corporate services by Party City Holdco Inc. or its affiliates to the Company, (ii) the product purchase agreement for the purchases of products from the Company by Party City Holdco Inc. or its affiliates and (iii) the intellectual property license agreement among Party City, its affiliates and the Company, in each case, as amended from time to time.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, or, in either case, an equivalent rating by any other Rating Agency.

"Investment Grade Securities" means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities or instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the DIP Issuers and their Subsidiaries; and

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2) which fund may also hold immaterial amounts of cash pending investment or distribution.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, reasonable travel and similar advances to officers, directors, distributors, consultants and employees, in each case made in the ordinary course of business and consistent with past practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding the footnotes thereto) of the DIP Issuers in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. The amount of any Investment shall be deemed to be the amount actually invested, without adjustment for subsequent increases or decreases in value or any write-downs or write-offs, but giving effect to any repayments thereof in the form of loans and any return on capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of such Investment).

"Laws" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Legal Holiday" means a Saturday, a Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or in the State at the place of payment. If a payment date at a place of payment is on a Legal Holiday, payment shall be made at that place on the next succeeding Business Day, and no interest shall accrue on such payment for the intervening period.

"Lien" means, with respect to any asset, any mortgage, lien, deed of trust, hypothecation, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention

agreement), any lease in the nature thereof; *provided* that in no event shall an operating lease be deemed to constitute a Lien.

"Material Adverse Effect" has the meaning set forth in the DIP Note Purchase Agreement.

"Material Real Property" means any fee-owned real property located in the United States and owned by any loan party, having a fair market value in excess of $250,000 at the time of acquisition or as of the date of substantial completion of any material improvement thereon or new construction thereof.

"Maturity Date" means the earliest of (i) the date that is six (6) months following the Initial Issue Date, (ii) the effective date and the date of the substantial consummation (as defined in Section 1102(2) of the Bankruptcy Code) of a plan of reorganization (any such plan a "Plan of Reorganization") that has been confirmed by an order of the Bankruptcy Court, (iii) the consummation of a sale or other disposition of all or substantially all of the assets of the Debtors under Section 363 of the Bankruptcy Code, (iv) the date the Bankruptcy Court orders the conversion of the bankruptcy case of any of the DIP Notes Parties to a Chapter 7 liquidation and (v) the acceleration of the DIP Notes in accordance with the terms of this Agreement.

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Mortgages" means collectively, the deeds of trust, trust deeds, hypothecs, deeds to secure debt and mortgages made by the DIP Notes Parties in favor or for the benefit of the Collateral Agent for the benefit of the DIP Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, and any other deeds of trust, trust deeds, hypothecs, deeds to secure debt or mortgages executed and delivered.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 3(37) or 4001(a)(3) of ERISA, to which the DIP Issuers, any Subsidiary or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Net Income" means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"Net Proceeds" means the aggregate proceeds received by the DIP Issuers or any of their Restricted Subsidiaries in respect of any Asset Sale, net of the direct costs relating to such Asset Sale, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable law, and brokerage and sales commissions, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries that are not DIP Guarantors as a result of any such Asset Sale by such Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the DIP Issuers or any Restricted Subsidiary as a result of such Asset Sale, until such time as such claim shall have been settled or otherwise finally resolved, or paid or payable by the DIP Issuers or any Restricted Subsidiary, in either case, in respect of such Asset Sale, any relocation expenses incurred as a result thereof, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this DIP Indenture (including taxes that are or would be imposed on the distribution or repatriation of any such Net Proceeds) (after taking into account any available tax credits or deductions and any tax sharing arrangements directly relating to such Asset Sale), amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than Indebtedness under the DIP Documents, the Prepetition Debt Documents and Subordinated

Indebtedness) secured by a Lien on the assets disposed of required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the DIP Issuers or any of their Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the DIP Issuers or any of their Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the Chief Restructuring Officer, the President, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of the DIP Issuers.

"Officer's Certificate" means a certificate signed on behalf of the DIP Issuers by an Officer of the DIP Issuers which meets the requirements set forth in this DIP Indenture and is delivered to the DIP Trustee.

"Opinion of Counsel" means a written opinion from legal counsel who is reasonably acceptable to the DIP Trustee, which meets the requirements set forth in this DIP Indenture. The counsel may be an employee of or counsel to the DIP Issuers.

"Paying Agent" means an office or agency maintained by the DIP Issuers pursuant to the terms of this DIP Indenture, where DIP Notes may be presented for payment. The DIP Trustee shall at all times serve as Paying Agent.

"PCHI" has the meaning set forth in the preamble.

"Permitted Disbursements Variance" means in the case of disbursements 115.0% of the projected applicable disbursements (excluding DIP Professional Fees) in the then in-effect Approved Budget.

"Permitted Investment" means:

(1) any Investment in any DIP Issuer or a DIP Guarantors;

(2) any Investment in cash and Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;

(3) any Investment by the DIP Issuers or any of their Restricted Subsidiaries in any Person listed on Schedule 2 hereto if as a result of such Investment:

(a) such Person becomes a DIP Guarantor; or

(b) such Person, in one transaction or a series of related transactions, is merged, amalgamated or consolidated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the DIP Issuers or the DIP Guarantors,

and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;

(4) any Investment in securities or other assets not constituting cash, Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to Section 4.06(a) or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on the Initial Issue Date and listed on Schedule 2 hereto; *provided* that the amount of any such Investment may not be increased above the amount outstanding on the Initial Issue Date unless otherwise permitted under this DIP Indenture;

(6) any Investment acquired by the DIP Issuers or any of their Restricted Subsidiaries:

(a) in exchange for any other Investment or accounts receivable held by the DIP Issuers or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable;

(b) as a result of a foreclosure by the DIP Issuers or any of their Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(c) as a result of the settlement, compromise or resolution of litigation, arbitration or other disputes with Persons who are not Affiliates; or

(d) in settlement of debts created in the ordinary course of business;

(7) [Reserved];

(8) [Reserved];

(9) guarantees (including Guarantees) of Indebtedness of a DIP Issuer or any Restricted Subsidiary permitted under Section 4.03, including, without limitation, any guarantee or other obligation issued or incurred under the ABL DIP Facility in connection with any letter of credit issued for the account of a DIP Issuer or any of its Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit) and performance guarantees that are Contingent Obligations in the ordinary course of business;

(10) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services or equipment or purchases of contract rights or licenses or leases of intellectual property, in each case, in the ordinary course of business;

(11) Investments set forth in the Approved Budget;

(12) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course;

(13) Investments in any DIP Guarantor in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business;

(14) Investments in the ordinary course of business consisting of (x) Uniform Commercial Code Article 3 endorsements for collection or deposit and (y) Article 4 customary trade

arrangements with customers that are not Affiliates of the DIP Issuers or any Restricted Subsidiary and otherwise consistent with past practices;

(15) [Reserved]; and

(16) guarantees of leases (other than capital leases) or of other obligations not constituting Indebtedness in favor of Persons who are not Affiliates of the DIP Issuers or any Restricted Subsidiary, in each case in the ordinary course of business.

"Permitted Liens" means, with respect to any Person:

(1) (i) (A) pledges, deposits or security by such Person under workmen's compensation laws, unemployment insurance, employers' health tax and other social security laws or similar legislation or regulations, health, disability or other employee benefits or property and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (B) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the DIP Issuers or any Subsidiary; or (ii) Liens, pledges and deposits in connection with bids, tenders, contracts (other than for Indebtedness for borrowed money) or leases, statutory obligations, surety, customs, bid and appeal bonds, performance and return of money bonds, bids, leases, government contracts, trade contracts, agreements with utilities, performance and completion guarantees and other obligations of a like nature (including letters of credit in lieu of any such items or to support the issuance thereof), in each case of clauses (i) and (ii) above, incurred in the ordinary course of business to secure health, safety and environmental obligations and obligations in respect of letters of credit or bank guarantees that have been posted to support payment of the items described in this clause (1);

(2) Liens imposed by law, such as landlord's, carriers', warehousemen's, materialmen's, repairmen's, construction and mechanics' Liens, in each case so long as such Liens arise in the ordinary course of business and secure amounts not overdue for a period of more than 30 days or, if more than 30 days overdue either (i) such amounts are being contested in good faith by appropriate actions or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP or (ii) with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(3) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than 30 days or, if overdue by more than 30 days, such taxes, assessments or other governmental charges (i) are being contested in good faith by appropriate actions diligently conducted, if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP, or (ii) are taxes, assessments or other governmental charges with respect to which the failure to make payment could not reasonably be expected to have a Material Adverse Effect;

(4) Liens in favor of DIP Issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds or with respect to other regulatory requirements or letters of credit or bankers' acceptances issued, and completion guarantees provided for, in each case pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice prior to the Initial Issue Date;

(5) minor survey exceptions, minor encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains,

telegraph and telephone and cable television lines, gas and oil pipelines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(6) Liens existing on the Initial Issue Date and listed on Schedule 4 hereto;

(7) [Reserved];

(8) [Reserved];

(9) [Reserved];

(10) [Reserved];

(11) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances, a bank guarantee or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(12) leases, subleases, licenses or sublicenses, grants or permits (including with respect to intellectual property and software) granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the DIP Issuers or any of their Restricted Subsidiaries and the customary rights reserved or vested in any Person by the terms of any lease, sublease, license, sublicense, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(13) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts in connection with any transaction otherwise permitted under this DIP Indenture;

(14) Liens in favor of any DIP Issuer or any DIP Guarantor;

(15) Liens on equipment of the DIP Issuers or any of their Restricted Subsidiaries granted in the ordinary course of business to the DIP Issuers' clients that are not Affiliates of the DIP Issuers or any Restricted Subsidiary;

(16) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in clause (6) and this clause (16) hereof; *provided, however*, that (i) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and proceeds and products thereof, (ii) such new Lien shall have the same Lien priorities as the prior Lien, and (iii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clause (6) and this clause (16) hereof at the time the original Lien became a Permitted Lien under this DIP Indenture, and (B) an amount necessary to pay any fees (including original issue discount, upfront fees or similar fees) and expenses, including premiums (including tender premiums

and accrued and unpaid interest), penalties or similar amounts, related to such modification, refinancing, refunding, extension, renewal or replacement;

(17) deposits made or other security provided to secure liabilities to insurance carriers under insurance or self-insurance arrangements in the ordinary course of business;

(18) Liens securing judgments for the payment of money not constituting an Event of Default under Section 6.01 so long as such Liens are, adequately bonded and any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(19) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(20) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(21) Liens deemed to exist in connection with Investments in repurchase agreements or other Cash Equivalents permitted under Section 4.03; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement or other Cash Equivalent;

(22) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(23) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations in the ordinary course of business with banks and not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the DIP Issuers or any of their Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the DIP Issuers and their Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the DIP Issuers or any of their Restricted Subsidiaries in the ordinary course of business;

(24) Liens solely on any cash earnest money deposits made by the DIP Issuers or any of their Restricted Subsidiaries in connection with any letter of intent or purchase agreement permitted under this DIP Indenture;

(25) the rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the DIP Issuers or any of their Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(26) restrictive covenants affecting the use to which real property may be put entered into in the ordinary course of business; *provided*, *however*, that the covenants are complied with;

(27) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business;

(28) zoning by-laws and other land use restrictions, including, without limitation, site plan agreements, development agreements and contract zoning agreements;

(29) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the DIP Issuers or any Restricted Subsidiary in the ordinary course of business;

(30) [Reserved];

(31) (i) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business, (ii) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business and (iii) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(32) Liens securing (i) the DIP Notes issued on the Initial Issue Date, (ii) any Additional DIP Notes issued under this DIP Indenture, (iii) the Prepetition 1L Notes outstanding on the Initial Issue Date (including PIK Securities with respect thereto) and (iv) Guarantees and DIP Guarantee with respect to securities described in clauses (i) through (iii), (iv) the Prepetition 2L Notes outstanding on the Initial Issue Date (including PIK Securities (as defined in the Prepetition 2L Indenture)) and Guarantees (as defined in the Prepetition 2L Indenture) of such Prepetition 2L Notes, so long as any such Liens on the Prepetition 2L Notes are subject to the terms of the Prepetition Notes Intercreditor Agreement;

(33) Liens securing obligations in respect of (x) Indebtedness and other obligations permitted to be incurred under the ABL DIP Facility, including any letter of credit facility relating thereto, that was permitted by the terms of this DIP Indenture to be incurred pursuant to clause (i) of Section 4.03(b) and (y) obligations of any DIP Issuer or any DIP Guarantor in respect of any Bank Products or Cash Management Services provided by any lender party to the ABL DIP Facility or any affiliate of such lender (or any Person that was a lender or an affiliate of a lender at the time the applicable agreements pursuant to which such Bank Products or Cash Management Services are provided were entered into); *provided*, *however*, that (i) any such Lien on collateral other than ABL Priority Collateral will be junior to the Liens with respect to Secured DIP Obligations and (ii) any such Lien shall be subject to the Prepetition ABL Intercreditor Agreement; *provided*, *further*, that all such Liens pursuant to this Clause (33) are subject to the limitations contained in the definition of "ABL Credit Agreement" and "ABL Priority Collateral" in the Prepetition 1L Indenture;

(34) Liens on cash and Cash Equivalents that are earmarked to be used to defease, redeem, satisfy or discharge Indebtedness; *provided* (i) such cash and/or Cash Equivalents are deposited into an account from which payment is to be made, directly or indirectly, to the Person or Persons holding the Indebtedness that is to be defeased, redeemed, satisfied or discharged, (ii) such Liens extend solely to the account in which such cash and/or Cash Equivalents are deposited and are solely in favor of the Person or Persons holding the Indebtedness (or any agent or trustee for such Person or Persons) that is to be defeased, redeemed, satisfied or discharged, and (iii) the defeasance, redemption, satisfaction or discharge of such Indebtedness is expressly permitted under this DIP Indenture;

(35) [Reserved]; and

(36) ABL Adequate Protection Liens.

For purposes of this definition, the term "Indebtedness" shall be deemed to include interest on such Indebtedness.

"Permitted Receipts Variance" means in the case of receipts, no less than 85.0% of the aggregate applicable receipts in the Approved Budget; *provided* that receipts received from PCHI within seven calendar days of a documented payment due date and budgeted to be received on such payment due date in the Approved Budget shall be deemed to be received on such payment due date.

"Permitted Variance" means, collectively, the Permitted Receipts Variance and the Permitted Disbursements Variance.

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

"Petition Date" has the meaning specified in the recitals hereto.

"Preferred Stock" means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution, or winding up.

"Prepetition 1L Noteholders" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 1L Notes" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 1L Notes Documents" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 1L Obligations" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 1L Secured Parties" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 2L Noteholders" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 2L Notes" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 2L Notes Documents" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 2L Obligations" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition 2L Secured Parties" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition ABL Agent" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition ABL Credit Agreement" has the meaning specified in the recitals hereto.

"Prepetition ABL Facility" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition ABL Intercreditor Agreement" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition ABL Lenders" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition ABL Loan Documents" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition ABL Obligations" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition Debt Documents" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition Notes Priority Collateral" has the meaning set forth in the Bankruptcy Court DIP Order.

"Prepetition Secured Obligations" has the meaning set forth in the Bankruptcy Court DIP Order.

"Proposed Budget" has the meaning set forth in Section 4.02(f).

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Stock and any warrants, rights or options to purchase or acquire Capital Stock that is not Disqualified Stock and that are not convertible into or exchangeable into Disqualified Stock; *provided* that such Capital Stock shall not be deemed Qualified Capital Stock to the extent financed, directly or indirectly, using funds borrowed from such Person or any Subsidiary of such Person until and to the extent such borrowing is repaid.

"Rating Agencies" means Moody's and S&P or if Moody's or S&P or both shall not make a rating publicly available, a nationally recognized statistical rating agency or agencies, as the case may be.

"Relevant Governmental Body" means, the Federal Reserve Board and/or the NYFRB, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

"Required DIP Noteholders" means as of any date of determination, DIP Noteholders having a majority in aggregate principal amount of the then outstanding DIP Notes.

"Responsible Officer" means the chief executive officer, chief restructuring officer, president, senior vice president, senior vice president (finance), vice president, chief financial officer, treasurer, manager of treasury activities or assistant treasurer or other similar officer or Person performing similar functions of a DIP Notes Party, and, as to any document delivered on the Initial Issue Date, any secretary or assistant secretary of a DIP Notes Party. Any document delivered hereunder that is signed by a Responsible Officer of a DIP Notes Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such DIP Notes Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such DIP Notes Party. Unless otherwise specified, all references herein to a "Responsible Officer" shall refer to a Responsible Officer of the DIP Issuers.

"Restricted Investment" means an Investment other than a Permitted Investment.

"Restricted Subsidiary" means, at any time, any direct or indirect Subsidiary of the DIP Issuers.

"S&P" means S&P Global Ratings and any successor to its rating agency business.

"Sale and Lease-Back Transaction" means any arrangement providing for the leasing by the DIP Issuers or any of their Restricted Subsidiaries of any real or tangible personal property, which property has been or is to be sold or transferred by a DIP Issuer or such Restricted Subsidiary to a third Person in contemplation of such leasing to which funds have been or are to be advanced by such third Person on the security of the leased property; provided that in connection with any Sale and Lease-Back Transaction, a DIP Issuer or such Restricted Subsidiary shall have received cash proceeds in an amount equal to or greater than the Fair Market Value of such property so sold or transferred on terms at least as favorable to such DIP Issuer or such Restricted Subsidiary as could be obtained on an arm's length basis from a non-Affiliate, as reasonably determined by the board of directors of Anagram LLC in good faith.

"SEC" means the U.S. Securities and Exchange Commission.

"Secured DIP Obligations" has the meaning set forth in the DIP Security Agreement.

"Secured Indebtedness" means any Indebtedness of the DIP Issuers or any of their Restricted Subsidiaries secured by a Lien.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Security Register" means the register of Securities, maintained by the Registrar, pursuant to Section 2.04 hereof.

"Significant Subsidiary" means any Restricted Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the Initial Issue Date.

"Similar Business" means any business conducted by the DIP Issuers and their Restricted Subsidiaries on the Initial Issue Date or any business that is a reasonable extension, development or expansion of any of the foregoing or is similar, reasonably related, incidental or ancillary thereto (including, for the avoidance of doubt, any sourcing companies created in connection with any of the foregoing).

"Stalking Horse Asset Purchase Agreement" has the meaning set forth in the DIP Note Purchase Agreement.

"Stalking Horse Bid" has the meaning set forth in the DIP Notes Purchase Agreement.

"Subordinated Indebtedness" means, with respect to the DIP Notes,

(1) any Indebtedness of the DIP Issuers which is by its terms subordinated in right of payment to the DIP Notes, and

(2) any Indebtedness of the DIP Guarantors which is by its terms subordinated in right of payment to the DIP Guarantee of such entity of the DIP Notes.

"Subsidiary" means, with respect to any Person:

(1) any corporation, association, or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power

of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof or is consolidated under GAAP with such Person at such time; and

(2) any partnership, joint venture, limited liability company or similar entity of which

(a) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise, and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended (15 U.S.C. §§ 77aaa-77bbbb).

"Trust Officer" means:

(1) any officer within the corporate trust department of the DIP Trustee, including any vice president, assistant vice president, trust officer or any other officer of the DIP Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person's knowledge of and familiarity with the particular subject, and

(2) who shall have direct responsibility for the administration of this DIP Indenture.

"Uniform Commercial Code" means the Uniform Commercial Code as from time to time in effect in the State of New York.

"Unrestricted Cash" means, as of any date of determination, with respect to the DIP Issuers and their Subsidiaries on a consolidated basis, all cash and Cash Equivalents of such Persons, as of the date of such determination (i) that is not pledged as performance collateral or bid bond collateral, (ii) that is not deposited in any account that is blocked and not accessible to the DIP Issuers or any of their Subsidiaries following the occurrence of an event of default or other enforcement action under any financing or security document to which the DIP Issuers or such Subsidiary is a party (other than pursuant to the DIP Security Documents), and (iii) that would not be designated as "restricted" on a consolidated balance sheet in accordance with GAAP.

"Variance Report" has the meaning set forth in Section 4.02(h).

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

"Wholly-Owned Subsidiary" of any Person means a Subsidiary of such Person, 100% of the outstanding Equity Interests of which (other than directors' qualifying shares and shares issued to foreign nationals as required under applicable law) shall at the time be directly or indirectly owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

SECTION 1.02. Other Definitions.

Term	Defined in Section
"Additional Interest"	2.12
"Asset Sale Offer Threshold"	4.06(b)
"Authentication Order"	2.03
"Clearstream"	Appendix A
"covenant defeasance option"	8.01(2)
"Definitive Security"	Appendix A
"Depository"	Appendix A
"Euroclear"	Appendix A
"Event of Default"	6.01
"Global Securities"	Appendix A
"Global Securities Legend"	Appendix A
"Guaranteed Obligations"	10.01(a)
"IAI"	Appendix A
"incur"	4.03(a)
"legal defeasance option"	8.01(2)
"OID Legend"	Appendix A
"Payment Default"	2.12
"protected purchaser"	2.08
"QIB"	Appendix A
"Registrar"	2.04(a)
"Regulation S"	Appendix A
"Regulation S Global Securities"	Appendix A
"Regulation S Permanent Global Security"	Appendix A
"Regulation S Securities"	Appendix A
"Regulation S Temporary Global Security"	Appendix A
"Restricted Payments"	4.04(a)
"Restricted Period"	Appendix A
"Restricted Securities Legend"	Appendix A
"Rule 144A"	Appendix A
"Rule 144A Global Securities"	Appendix A
"Rule 144A Securities"	Appendix A
"Rule 501"	Appendix A
"Securities Custodian"	Appendix A
"Successor Person"	5.01(b)(i)
"Transfer Restricted Securities"	Appendix A
"Unrestricted Definitive Securities"	Appendix A
"Unrestricted Global Securities"	Appendix A

SECTION 1.03. Rules of Construction. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) "including" means including without limitation;

(e) words in the singular include the plural and words in the plural include the singular;

(f) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness, and senior Indebtedness shall not be deemed to be subordinate or junior to any other senior Indebtedness merely by virtue of its junior priority with respect to the same collateral;

(g) "$" and "U.S. dollars" each refer to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts;

(h) "consolidated" means, with respect to any Person, such Person consolidated with its Restricted Subsidiaries;

(i) "will" shall be interpreted to express a command;

(j) provisions apply to successive events and transactions;

(k) unless the context otherwise requires, any reference to an "Appendix," "Article," "Section," "clause," "Schedule" or "Exhibit" refers to an Appendix, Article, Section, clause, Schedule or Exhibit, as the case may be, of this DIP Indenture;

(l) the words "herein," "hereof" and other words of similar import refer to this DIP Indenture as a whole and not any particular Article, Section, clause or other subdivision;

(m) references to sections of, or rules under the Securities Act, the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time;

(n) unless otherwise provided, references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements or instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this DIP Indenture; and

(o) the DIP Indenture is not qualified under the Trust Indenture Act, and the Trust Indenture Act shall not apply to or in any way govern the terms of this DIP Indenture, including Section 316(b) thereof. No provisions of the Trust Indenture Act are incorporated into this DIP Indenture, other than as referenced for the limited purpose set forth in Section 7.09 hereof.

SECTION 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this DIP Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered in writing to the DIP Trustee and, where it is hereby expressly required, to the DIP Issuers. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Security, shall be sufficient for

any purpose of this DIP Indenture and (subject to Section 7.01) conclusive in favor of the DIP Trustee and the DIP Issuers, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgements of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the DIP Trustee deems sufficient, provided that such proof shall always be in writing.

(c) The ownership of DIP Notes shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any DIP Notes shall bind every future Holder of the same DIP Note and the Holder of every DIP Notes issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the DIP Trustee or the DIP Issuers in reliance thereon, whether or not notation of such action is made upon such DIP Note.

(e) The DIP Issuers may, at their option, set a record date for purposes of determining the identity of Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or take any other act, or to vote or consent to any action by vote or consent authorized or permitted to be given or taken by Holders, but the DIP Issuers shall have no obligation to do so.

(f) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular DIP Note may do so with regard to all or any part of the principal amount of such DIP Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(g) Without limiting the generality of the foregoing, a Holder, including the Depositary, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this DIP Indenture to be made, given or taken by Holders, and the Depositary may provide its proxy to the beneficial owners of interests in any such Global Security through such Depositary's standing instructions and customary practices.

ARTICLE 2

THE DIP NOTES

SECTION 2.01. Amount of DIP Notes. The aggregate principal amount of DIP Notes that may be authenticated and delivered under this DIP Indenture on the Initial Issue Date is $10.0 million. Subject to the terms of this DIP Indenture, Additional DIP Notes may also be issued after the Initial Issue Date in accordance with Section 2.16. The DIP Notes issued on the Initial Issue Date and any Additional DIP Notes subsequently issued under this DIP Indenture in accordance with Section 2.16 will be treated as a single class for all purposes hereunder, including, without limitation, waivers, amendments, redemptions and offers to purchase, and under the DIP Security Documents. The Company shall maintain a register of the outstanding principal amount of DIP Notes, reflecting any increase on account the issuance of Additional DIP Notes, and any redemptions or prepayments thereof. Absent

manifest error, such register shall be conclusive evidence of the outstanding principal amount of DIP Notes. The DIP Trustee shall have no obligation or duty to monitor, determine or inquire as to principal amounts of the DIP Notes on such register and shall have no liability or responsibility for such register.

SECTION 2.02. Form and Dating. Provisions relating to the DIP Notes are set forth in the Appendix, which is hereby incorporated into and expressly made a part of this DIP Indenture. The DIP Notes and the DIP Trustee's certificate of authentication shall each be substantially in the form of Exhibit B hereto, which is hereby incorporated in and expressly made a part of this DIP Indenture. The DIP Notes may have notations, legends or endorsements required by law, stock exchange rule, agreements to which any DIP Issuer or any DIP Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the DIP Issuers). Each DIP Note shall be dated the date of its authentication. The DIP Notes shall be issuable only in registered form without interest coupons, in minimum denominations of $1.00 and any integral multiples of $0.01 in excess thereof.

SECTION 2.03. Execution and Authentication. On the Initial Issue Date and the issue date of any Additional DIP Notes, the DIP Trustee shall authenticate and make available for delivery upon a written order of the DIP Issuers signed by one Officer of each DIP Issuer (an "Authentication Order") DIP Notes for original issue on the Initial Issue Date in an aggregate principal amount of $10.0 million. In addition, subject to the terms of this DIP Indenture, the DIP Trustee shall upon receipt of an Authentication Order authenticate and deliver any Additional DIP Notes issued after the Initial Issue Date in an aggregate principal amount of $12.0 million. Such Authentication Order shall specify the amount of the DIP Notes to be authenticated and the date on which the issue of DIP Notes is to be authenticated, the registered holder of each of the DIP Notes and delivery instructions. It is understood that, notwithstanding anything to the contrary in this DIP Indenture, only an Authentication Order and an Officer's Certificate and not an Opinion of Counsel is required for the DIP Trustee to authenticate the DIP Notes (including Additional DIP Notes).

One Officer shall sign the DIP Notes for the DIP Issuers by manual, facsimile or PDF signature.

If an Officer whose signature is on a DIP Note no longer holds that office at the time the DIP Trustee authenticates the DIP Note, the DIP Note shall be valid nevertheless.

A DIP Note shall not be entitled to any benefit under this DIP Indenture or valid until an authorized signatory of the DIP Trustee manually signs the certificate of authentication on the DIP Note. The signature shall be conclusive evidence that the DIP Note has been authenticated under this DIP Indenture.

The DIP Trustee may appoint one or more authenticating agents (an "Authenticating Agent") reasonably acceptable to the DIP Issuers to authenticate the DIP Note. Unless limited by the terms of such appointment, an Authenticating Agent may authenticate DIP Notes whenever the DIP Trustee may do so. Each reference in this DIP Indenture to authentication by the DIP Trustee includes authentication by such agent. An Authenticating Agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

The terms and provisions contained in the DIP Notes shall constitute, and are expressly made, a part of this DIP Indenture and, to the extent applicable, the DIP Issuers, the DIP Guarantors and the DIP Trustee, by their execution and delivery of this DIP Indenture, expressly agree to such terms and provisions and agree to be bound thereby.

SECTION 2.04. Registrar and Paying Agent

(a) The DIP Issuers shall maintain (i) an office or agency where DIP Notes may be presented for registration of transfer or for exchange (the "Registrar") and (ii) the Paying Agent. The Registrar shall keep a register of the DIP Notes and of their transfer and exchange. The DIP Issuers may have one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrars. The term "Paying Agent" includes the Paying Agent and any additional paying agents. The DIP Issuers initially appoints the DIP Trustee as Registrar, Paying Agent and the Securities Custodian with respect to the Global Securities. When the DIP Issuers enter into an agency agreement with any registrar, paying agent, co-registrar or transfer agent that is not the DIP Trustee, it will notify the DIP Trustee in writing of the name and address of each such agent.

(b) The DIP Issuers shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this DIP Indenture. The agreement shall implement the provisions of this DIP Indenture that relate to such agent. The DIP Issuers shall notify the DIP Trustee in writing of the name and address of any such agent. If the DIP Issuers fails to maintain a Registrar or Paying Agent, the DIP Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06.

(c) The DIP Issuers may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the DIP Trustee and without prior notice to any Holder; *provided, however*, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the DIP Issuers and such successor Registrar or Paying Agent, as the case may be, and delivered to the DIP Trustee in writing or (ii) notification to the DIP Trustee in writing that the DIP Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the DIP Issuers and the DIP Trustee; *provided*, *however*, that the DIP Trustee may resign as Paying Agent or Registrar only if the DIP Trustee also resigns as DIP Trustee in accordance with Section 7.07.

SECTION 2.05. Paying Agent to Hold Money in Trust. Prior to by 12:00 PM (New York City Time) or on each due date of the principal of and cash interest on any DIP Note, the DIP Issuers shall deposit with the Paying Agent a sum sufficient to pay such principal and cash interest when so becoming due. The DIP Issuers shall require each Paying Agent (other than the DIP Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the DIP Trustee all money held by the Paying Agent for the payment of principal of and cash interest on the DIP Notes, and shall notify the DIP Trustee in writing of any default by the DIP Issuers in making any such payment. The DIP Issuers at any time or, during the continuance of a Default under this DIP Indenture, the DIP Trustee may require the Paying Agent to pay all money held by it to the DIP Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the DIP Trustee. The DIP Trustee shall serve as Paying Agent for the DIP Notes.

SECTION 2.06. Holder Lists. The DIP Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the DIP Trustee is not the Registrar, the DIP Issuers shall furnish, or cause the Registrar to furnish, to the DIP Trustee, in writing at least five Business Days before each interest payment date and at such other times as the DIP Trustee may request in writing, a list in such form and as of such date as the DIP Trustee may reasonably require of the names and addresses of Holders.

SECTION 2.07. Transfer and Exchange. The DIP Notes shall be issued in registered form and shall be transferable only upon the surrender of a DIP Note for registration of transfer and in compliance with the Appendix. When a DIP Note is presented to the Registrar with a request to

register a transfer, the Registrar shall register the transfer as requested if its requirements therefor are met. When DIP Notes are presented to the Registrar with a request to exchange them for an equal principal amount of DIP Notes of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the DIP Issuers shall execute and the DIP Trustee shall authenticate DIP Notes at the Registrar's request. The DIP Issuers may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges in connection with any transfer or exchange pursuant to this Section. The DIP Trustee shall be provided all information reasonably requested by the DIP Trustee to allow the DIP Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 605. The DIP Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information. The DIP Issuers shall not be required to make, and the Registrar need not register, transfers or exchanges of any DIP Notes (i) selected for redemption (except, in the case of DIP Notes to be redeemed in part, the portion thereof not to be redeemed), (ii) for a period of 15 days before the mailing of a notice of redemption of DIP Notes to be redeemed or (iii) between a regular record date and the next succeeding interest payment date.

Prior to the due presentation for registration of transfer of any DIP Note, the DIP Issuers, the DIP Guarantors, the DIP Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name a DIP Note is registered as the absolute owner of such DIP Note for the purpose of receiving payment of principal of and interest on such DIP Note and for all other purposes whatsoever, whether or not such DIP Note is overdue, and none of any DIP Issuer, any DIP Guarantor, the DIP Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any Holder of a beneficial interest in a Global Security shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by (a) the Holder of such Global Security (or its agent) or (b) any Holder of a beneficial interest in such Global Security, and that ownership of a beneficial interest in such Global Security shall be required to be reflected in a book entry.

All DIP Notes issued upon any transfer or exchange pursuant to the terms of this DIP Indenture shall evidence the same debt and shall be entitled to the same benefits under this DIP Indenture as the DIP Notes surrendered upon such transfer or exchange.

SECTION 2.08. Replacement DIP Notes. If a mutilated DIP Note is surrendered to the Registrar or if the Holder of a DIP Note claims that the DIP Note has been lost, destroyed or wrongfully taken, the DIP Issuers shall issue, and the DIP Trustee shall authenticate, a replacement DIP Note if the requirements of Section 8-405 of the New York UCC are met, such that the Holder (a) satisfies the DIP Issuers or the DIP Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the DIP Issuers or the DIP Trustee prior to the DIP Note being acquired by a protected purchaser as defined in Section 8-303 of the New York UCC (a "protected purchaser") and (c) satisfies any other reasonable requirements of the DIP Trustee. Such Holder shall furnish an indemnity bond sufficient in the judgment of (i) the DIP Trustee to protect the DIP Trustee or (ii) the DIP Issuers to protect the DIP Issuers, the DIP Trustee, the Paying Agent and the Registrar from any loss that any of them may suffer if a DIP Note is replaced. The DIP Issuers and the DIP Trustee may charge the Holder for their expenses in replacing a DIP Note (including without limitation, attorneys' fees and disbursements in replacing such DIP Note). In the event any such mutilated, lost, destroyed or wrongfully taken DIP Note has become or is about to become due and payable, the DIP Issuers in their discretion may pay such DIP Note instead of issuing a new DIP Note in replacement thereof.

Every replacement DIP Note is an additional obligation of the DIP Issuers.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken DIP Notes.

SECTION 2.09. Outstanding DIP Notes. DIP Notes outstanding at any time are all DIP Notes authenticated by the DIP Trustee except for those canceled by it, those delivered to it for cancellation, those paid pursuant to Section 2.08 and those described in this Section as not outstanding. Subject to Section 12.04, a DIP Note does not cease to be outstanding because the DIP Issuers or an Affiliate of the DIP Issuers holds the DIP Notes.

If a DIP Note is replaced pursuant to Section 2.08, it ceases to be outstanding unless the DIP Trustee and the DIP Issuers receive proof satisfactory to them that the replaced DIP Note is held by a protected purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this DIP Indenture, on a redemption date or maturity date or any date of purchase pursuant to an offer to purchase money sufficient to pay all principal and interest payable on that date with respect to the DIP Notes (or portions thereof) to be redeemed, maturing or purchased, as the case may be, and no Paying Agent is prohibited from paying such money to the Holders on that date pursuant to the terms of this DIP Indenture, then on and after that date such DIP Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.10. Temporary DIP Notes. In the event that Definitive Securities are to be issued under the terms of this DIP Indenture, until such Definitive Securities are ready for delivery, the DIP Issuers may prepare and the DIP Trustee shall authenticate temporary DIP Notes. Temporary DIP Notes shall be substantially in the form of Definitive Securities but may have variations that the DIP Issuers considers appropriate for temporary Securities. Without unreasonable delay, the DIP Issuers shall prepare and the DIP Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the DIP Issuers, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities.

SECTION 2.11. Cancellation. The DIP Issuers at any time may deliver DIP Notes to the DIP Trustee for cancellation. The Registrar and each Paying Agent shall forward to the DIP Trustee any DIP Notes surrendered to them for registration of transfer, exchange or payment. The DIP Trustee, or at the written direction of the DIP Trustee, the Registrar or the Paying Agent and no one else shall cancel all DIP Notes surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled DIP Notes in accordance with its customary procedures (subject to the record retention requirement of the Exchange Act). The DIP Issuers may not issue new DIP Notes to replace DIP Notes they have redeemed, paid or delivered to the DIP Trustee for cancellation. The DIP Trustee shall not authenticate DIP Notes in place of canceled DIP Notes other than pursuant to the terms of this DIP Indenture.

SECTION 2.12. Defaulted Interest and Additional Interest. If the DIP Issuers defaults in a payment of interest on the DIP Notes (a "Payment Default"), the DIP Issuers shall pay the defaulted interest then borne by the DIP Notes plus additional interest ("Additional Interest") on the principal amount of the DIP Notes at a rate of 2.0% per annum (plus interest on such defaulted interest to the extent lawful) in cash and in any lawful manner. The DIP Issuers may pay the defaulted interest and Additional Interest to the Persons who are Holders on a subsequent special record date. Additional Interest shall continue to accrue on the outstanding principal amount of the DIP Notes until, but not including, the date the related Payment Default is cured. The DIP Issuers shall fix or cause to be fixed

any such special record date and payment and shall promptly mail or cause to be sent to each affected Holder and the DIP Trustee a notice that states the special record date, the payment date and the amount of defaulted interest and Additional Interest to be paid. The DIP Issuers shall notify the DIP Trustee in writing of the amount of defaulted cash interest proposed to be paid on each DIP Note and the date of the proposed payment, and at the same time the DIP Issuers shall deposit with the DIP Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the DIP Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to (but in no event earlier than fifteen days before the date of the proposed payment) such defaulted interest as provided in this Section 2.12.

SECTION 2.13. CUSIP Numbers, ISINs, etc. The DIP Issuers in issuing the DIP Notes may use CUSIP numbers, ISINs and "Common Code" numbers (if then generally in use) and, if so, the DIP Trustee shall use CUSIP numbers, ISINs and "Common Code" numbers in notices of redemption as a convenience to Holders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the DIP Notes or as contained in any notice of a redemption that reliance may be placed only on the other identification numbers printed on the DIP Notes and that any such redemption shall not be affected by any defect in or omission of such numbers. The DIP Issuers shall promptly advise the DIP Trustee in writing of any change in the CUSIP numbers, ISINs and "Common Code" numbers.

SECTION 2.14. Calculation of Principal Amount of DIP Notes. The aggregate principal amount of the DIP Notes, at any date of determination, shall be the principal amount of the DIP Notes outstanding at such date of determination (including any outstanding Additional DIP Notes). With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the DIP Notes, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of DIP Notes, the Holders of which have so consented, by (b) the aggregate principal amount, as of such date of determination, of the DIP Notes then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.09 and Section 12.04 of this DIP Indenture. Any such calculation made pursuant to this Section 2.14 shall be made by the DIP Issuers and delivered to the DIP Trustee pursuant to an Officer's Certificate.

SECTION 2.15. Payment of Interest. Interest shall be payable in cash monthly in arrears on the 14th day of each month, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "interest payment date"). Interest on the DIP Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance at a rate per annum equal to the Applicable Rate. The DIP Issuers shall also pay any Additional Interest required to be paid pursuant to Section 2.12 of this DIP Indenture. Interest on the DIP Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

SECTION 2.16. Issuance of Additional DIP Notes.

(a) Notwithstanding anything in this DIP Indenture or the DIP Documents to the contrary, the DIP Issuers may issue additional DIP Notes under this DIP Indenture in an aggregate principal amount of $12.0 million having identical terms and conditions as the DIP Notes issued on the Initial Issue Date (such additional DIP Notes, "Additional DIP Notes"), except that the applicable issue price, issue date and date from which interest accrues may differ. Any subsequent issue of Additional DIP Notes will be secured, equally and ratably, with the DIP Notes issued on the Initial Issue Date. Such Additional DIP Notes may be issued in one or more series and with the same or different CUSIP number as the DIP Notes issued on the Initial Issue Date; provided, however, that unless such Additional DIP Notes are issued under a

separate CUSIP number, such Additional DIP Notes must be fungible with the DIP Notes issued on the Initial Issue Date for U.S. federal income tax purposes. The DIP Notes issued on the Initial Issue Date and the Additional DIP Notes, if any, shall be treated as a single class for all purposes under this DIP Indenture and the DIP Documents, including waivers, amendments, redemptions or prepayment. Any Additional DIP Notes shall be part of the same issue as the DIP Notes issued on the Initial Issue Date and shall vote on all matters with the DIP Noteholders.

(b) With respect to any Additional DIP Notes, the DIP Issuers shall set forth in an Officer's Certificate delivered to the DIP Trustee, the following information:

(i) the aggregate principal amount of such Additional DIP Notes to be authenticated and delivered pursuant to this Agreement;

(ii) the issue date and the CUSIP and ISIN numbers, if any, of such Additional DIP Notes; and

(iii) whether such Additional DIP Notes shall be Rule 144A Securities, Regulation S Notes or 4(a)(2) Securities.

(c) Upon receipt of an Officer's Certificate pursuant to Section 2.16(b), the DIP Trustee shall authenticate such Additional DIP Notes.

SECTION 2.17. Credit Bidding. Each DIP Notes Party and each DIP Noteholder agrees that a credit bid of up to the full amount of the DIP Obligations outstanding under the DIP Documents (including as part of a joint credit bid with Prepetition 1L Obligations and/or Prepetition 2L Obligations) shall be made at the written direction of the Required DIP Noteholders during any sale of all or any portion of any DIP Notes Parties' or DIP Notes Parties' affiliates' assets or equity, including without limitation, sales occurring pursuant to Section 363 of the Bankruptcy Code or included as part of any Plan of Reorganization subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code. Each DIP Noteholder further agrees that it will be bound by any such credit bid made, and any receipt of "take-back" debt or other securities contemplated by Section 9.03, at the direction of the Required DIP Noteholders. Without limiting the foregoing, each DIP Notes Party consents and agrees to the credit bid by the DIP Trustee as contemplated in the Stalking Horse Asset Purchase Agreement.

ARTICLE 3

REDEMPTION

SECTION 3.01. Redemption. The DIP Notes may be redeemed, in whole but not in part, subject to the conditions and at the redemption prices set forth in Section 3.09 hereof, together with accrued and unpaid interest to, but excluding, the redemption date.

SECTION 3.02. Applicability of Article. Redemption of DIP Notes at the election of the DIP Issuers or otherwise, as permitted or required by any provision of this DIP Indenture, shall be made in accordance with such provision and this Article.

SECTION 3.03. Notices to DIP Trustee. If the DIP Issuers elects to redeem the DIP Notes pursuant to the optional redemption provisions of Section 3.09 hereof, it shall notify the DIP Trustee in writing of (i) the Section or subsection of this DIP Indenture pursuant to which the redemption

shall occur, (ii) the redemption date, (iii) the principal amount of DIP Notes to be redeemed and (iv) the redemption price. The DIP Issuers shall give notice to the DIP Trustee in writing provided for in this paragraph at least five (5) Business Days (or such shorter period as shall be acceptable to the DIP Trustee) before notice of redemption is required to be delivered or mailed to Holders pursuant to Section 3.05 but not more than 60 days before a redemption date if the redemption is pursuant to Section 3.09; *provided,* notice may be given more than 60 days prior to a redemption date if the notice is (i) issued in connection with Section 8.01 or (ii) conditioned upon satisfaction (or waiver by the DIP Issuers in their sole discretion) of one or more conditions precedent and any or all such conditions shall not have been satisfied (or waived by the DIP Issuers in their sole discretion). Such notice shall be accompanied by an Officer's Certificate from the DIP Issuers to the effect that such redemption will comply with the conditions herein. Any such notice may be canceled at any time prior to notice of such redemption being sent to any Holder and shall thereby be void and of no effect.

SECTION 3.04. [Reserved].

SECTION 3.05. Notice of Optional Redemption.

(a) At least 5 Business Days but not more than 60 days before a redemption date pursuant to the optional redemption provisions of Section 3.09 hereof, the DIP Issuers shall send electronically, mail or cause to be mailed by first-class mail a notice of redemption to each Holder whose DIP Notes are to be redeemed (except that such notice of redemption may be mailed more than 60 days prior to a redemption date if the notice is (i) issued in connection with Section 8.01 or (ii) conditioned upon satisfaction (or waiver by the DIP Issuers in its sole discretion) of one or more conditions precedent and any or all such conditions shall not have been satisfied (or waived by the DIP Issuers in its sole discretion)).

Any such notice shall identify the DIP Notes to be redeemed and shall state:

(i) the redemption date;

(ii) the redemption price and the amount of accrued and unpaid interest to the redemption date;

(iii) the Section of this DIP Indenture pursuant to which the DIP called for redemption are being redeemed;

(iv) the name and address of the Paying Agent;

(v) that DIP Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued interest;

(vi) [Reserved];

(vii) any condition to such redemption;

(viii) that, unless the DIP Issuers defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this DIP Indenture, interest on DIP Notes called for redemption ceases to accrue on and after the redemption date;

(ix) the CUSIP number, ISIN and/or "Common Code" number, if any, printed on the DIP Notes being redeemed; and

(x) that no representation is made as to the correctness or accuracy of the CUSIP number or ISIN and/or "Common Code" number, if any, listed in such notice or printed on the Securities.

(b) At the DIP Issuers' written request, the DIP Trustee shall give the notice of redemption in the DIP Issuers' name and at the DIP Issuers' expense. In such event, the DIP Issuers shall provide the DIP Trustee with the information in writing required by this Section 3.05 at least 5 Business Days (or such shorter period as shall be acceptable to the DIP Trustee) prior to the date such notice is to be provided to Holders.

(c) Notice of any redemption of DIP Notes described above may be given prior to such redemption, and any such redemption or notice may, at the DIP Issuers' sole discretion, be subject to one or more conditions precedent, and any notice of redemption made in connection with a related transaction or event may, at the DIP Issuers' discretion, be given prior to the completion or the occurrence thereof. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, such notice of redemption shall describe each such condition, and, if applicable, shall state that such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived, in the DIP Issuers' sole discretion) by the redemption date, or that such notice may be rescinded at any time in the DIP Issuers' discretion if in the good faith judgment of the DIP Issuers any or all of such conditions will not be satisfied. If any such condition precedent has not been satisfied, the DIP Issuers shall provide written notice to the DIP Trustee prior to the close of business on the Business Day immediately prior to the redemption date. Upon receipt of such notice, the notice of redemption shall be rescinded, and the redemption of the DIP Notes shall be rescinded as provided in such notice. Upon receipt, the DIP Trustee shall deliver such written notice to each Holder. In addition, the DIP Issuers may provide in such notice that payment of the redemption price and performance of the DIP Issuers' obligations with respect to such redemption may be performed by another Person.

SECTION 3.06. Effect of Notice of Redemption. Once notice of redemption is mailed or sent in accordance with Section 3.05, DIP Notes called for redemption become due and payable on the redemption date and at the redemption price stated in the notice (except as described in Section 3.05). Upon surrender to the Paying Agent, such DIP Notes shall be paid at the redemption price stated in the notice, plus accrued interest, to, but not including, the redemption date; *provided*, *however*, that if the redemption date is after a regular record date and on or prior to the interest payment date, the accrued interest shall be payable to the Holder of the redeemed Securities registered on the relevant record date. The notice, if mailed in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder. In the event that such DIP Note is not surrendered to the Paying Agent by the redemption date, the DIP Trustee shall be entitled to escheat any funds in accordance with applicable law.

SECTION 3.07. Deposit of Redemption Price. With respect to any DIP Notes, prior to 11:00 a.m., New York City time, on the redemption date, the DIP Issuers shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest on all DIP Notes to be redeemed on that date other than DIP Notes called for redemption that have been delivered by the DIP Issuers to the DIP Trustee in writing for cancellation. On and after the redemption date, interest shall cease to accrue on DIP Notes called for redemption so long as the DIP Issuers have deposited with the Paying Agent funds sufficient to pay the principal of, plus accrued and unpaid interest on, the DIP Notes to be redeemed, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this DIP Indenture or applicable law. If a DIP is redeemed on or after a record date but on or prior to the related interest payment date, then any accrued and unpaid interest to the redemption date shall be

paid on the relevant interest payment date to the Person in whose name such Security was registered at the close of business on such record date.

SECTION 3.08. [Reserved].

SECTION 3.09. Optional Redemption. The DIP Issuers may redeem the DIP Notes, at their option, at any time and from time to time, in whole or in part, upon notice in accordance with Section 3.05 hereof, at a price of 100.00% (expressed as a percentage of the principal amount of the DIP Notes to be redeemed), plus accrued and unpaid interest thereon to, but not including, the applicable redemption date (subject to the right of the Holders of record on the relevant record date to receive interest due on the relevant interest payment date).

ARTICLE 4

COVENANTS

SECTION 4.01. Payment of DIP Notes. The DIP Issuers, jointly and severally, shall promptly pay the principal of, premium, if any, and interest on the DIP Notes, on the dates and in the manner provided in the DIP Notes and in this DIP Indenture. An installment of principal or interest shall be considered paid on the date due if on such date the DIP Trustee or the Paying Agent holds as of 11:00 a.m., New York City time, money sufficient to pay all principal and cash interest then due and the DIP Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this DIP Indenture.

The DIP Issuers shall pay interest on overdue principal at the rate specified therefor in the DIP Indenture and/or in the DIP Notes, and it shall pay interest on overdue installments of interest at the same rate borne by the DIP Notes to the extent lawful.

SECTION 4.02. Reports and Other Information.

(a) So long as any DIP Notes (including any Additional DIP Notes) are outstanding, the DIP Issuers will furnish to the DIP Trustee within 90 calendar days after the end of the fiscal year (including the fiscal year preceding the fiscal year in which the Initial Issue Date occurs), a consolidated balance sheet of Anagram LLC and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income or operations, stockholders' equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Anagram LLC as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Anagram LLC and its Subsidiaries in accordance with GAAP, subject to the absence of footnotes.

(b) So long as any DIP Notes (including any Additional DIP Notes) are outstanding, the DIP Issuers will furnish to the DIP Trustee within 45 calendar days after the end of each of the first three fiscal quarters of each fiscal year (including the fiscal quarter preceding the fiscal quarter in which the Initial Issue Date occurs), a consolidated balance sheet of Anagram LLC and its Subsidiaries as at the end of such fiscal quarter and in comparative format, the prior fiscal year-end and the related consolidated statements of income or operations for such fiscal quarter and the portion of the fiscal year then ended, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, and statements of stockholders' equity for the current fiscal quarter and consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding portion of the previous

fiscal year, all in reasonable detail and certified by a Responsible Officer of Anagram LLC as fairly presenting in all material respects the financial condition, results of operations, stockholders' equity and cash flows of Anagram LLC and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

(c) Delivery of such reports, information and documents to the DIP Trustee is for informational purposes only and the DIP Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the DIP Issuers' compliance with any of its covenants hereunder (as to which the DIP Trustee is entitled to rely exclusively on Officer's Certificates with respect thereto). The DIP Trustee shall have no responsibility for the filing, timeliness or content of such reports. Additionally, the DIP Trustee shall not be obligated to monitor or confirm, on a continuing basis or otherwise, the DIP Issuers' compliance with the covenants or with respect to any reports or other documents filed with the SEC or EDGAR or any website or datasite under this DIP Indenture.

(d) Notwithstanding anything to the contrary set forth above, if the DIP Issuers (or any direct or indirect parent of the DIP Issuers) has (i) made available through EDGAR or SEC filings the reports and information described in the preceding paragraphs with respect to the DIP Issuers or (ii) has delivered such information to the DIP Trustee and posted copies of such information to a website or online data system which shall require a confidentiality acknowledgment (which may be nonpublic and may be maintained by the DIP Issuers or a third party) to which access will be given to DIP Noteholders, prospective purchasers of the DIP Notes (which prospective purchasers will be limited to "qualified institutional buyers" (within the meaning of Rule 144A of the Securities Act) or non-U.S. persons (as defined under Regulation S of the Securities Act)), securities analysts and market making institutions that certify their status as such to the reasonable satisfaction of the Company, the DIP Issuers shall be deemed to be in compliance with the provisions of this Section 4.02.

(e) Each annual and quarterly report provided pursuant to Section 4.02(a) and Section 4.02(b) herein shall (a) separately break out the portion of sales made to Affiliates and the portion of sales made to non-Affiliates and (b) provide a narrative discussion of the comparability of the amount and nature of rebates, discounts and gross pricing applied to sales to Affiliates as compared to those applied to non-Affiliates.

(f) No later than the Thursday of each week after the Petition Date commencing on November 16, 2023, the DIP Notes Parties shall provide to the DIP Trustee and the financial advisor to the DIP Noteholders an updated 13-week statement of the DIP Notes Parties anticipated cash receipts and disbursements in the form of the Initial DIP Budget (as defined in the Bankruptcy Court DIP Order) for the subsequent 13-week period (a "Proposed Budget"), which Proposed Budget shall modify and supersede any prior budget upon the approval of the Required DIP Noteholders in their sole and absolute discretion (such Proposed Budget upon such approval and including the Initial DIP Budget, an "Approved Budget") and include separate schedule covering any anticipated payments payable to any Affiliate of the DIP Notes Parties. Any determination of compliance with the Approved Budget (subject to any express Permitted Variance) shall be determined on a cumulative basis from the beginning of the period covered by the Initial DIP Budget to the date of such determination, except to the extent expressly tested by reference to the Budget Testing Period.

(g) No later than the Thursday of each week after the Petition Date commencing on November 16, 2023, the DIP Notes Parties shall deliver to the DIP Trustee and the financial advisor to the DIP Noteholders:

(i) a liquidity report reflecting the aggregate amount of unrestricted cash of the DIP Notes Parties in form satisfactory to the Required DIP Noteholders;

(ii) an accounts payable aging report; and

(iii) information describing any events that have, or would be reasonably expected to result in a Material Adverse Effect.

(h) No later than Thursday of each week following the Thursday that is two full weeks after the Petition Date (prior to 5:00 p.m.), the DIP Issuers shall deliver to the DIP Trustee and the financial advisor to the DIP Noteholders a budget variance report in a form satisfactory to the Required DIP Noteholders (each, a "Variance Report") describing in reasonable detail the cash receipts and cash disbursements of the DIP Issuers and DIP Guarantors, on an aggregate and line-item basis, during the relevant Budget Testing Period (or, prior to the completion of any Budget Testing Period, budgeted receipts or budgeted disbursements, as applicable, on an aggregate and line item basis, for each full fiscal week completed, and on a cumulative basis, after the Petition Date and prior to the date of such delivery) as compared to the projected cash receipts and cash disbursements, on an aggregate and line item basis, provided by the then-current Approved Budget for the same period.

(i) Every other week, at a time mutually agreed with the Required DIP Noteholders that is after the delivery of the information required pursuant to clause (h) above in any week, upon the request of the Required DIP Noteholders, the DIP Issuers' financial advisor shall participate in one conference call for DIP Noteholders that are not "public-side DIP Noteholders" (i.e., DIP Noteholders that do not wish to receive material non-public information with respect to the DIP Issuers or their securities) to discuss the cash flows, liquidity position, financial condition and results of operations of the DIP Issuers and their Subsidiaries and the Approved Budget and the Variance Report during the preceding week.

(j) As soon as reasonably practicable in advance of, but no later than the earlier of (x) two (2) days prior to, or (y) contemporaneous delivery to any statutory committee appointed in the Chapter 11 Cases or the DIP Trustee, as the case may be, the DIP Issuers shall provide the DIP Trustee, Milbank LLP and any requesting counsel to a DIP Noteholder with any filing with the Bankruptcy Court, all proposed orders and pleadings related to the DIP Notes, the commitments under the DIP Note Purchase Agreement and the DIP Documents, any sale or other disposition of DIP Collateral outside the ordinary course, cash management, adequate protection, any Plan of Reorganization and/or any disclosure statement related thereto (except that, with respect to any emergency pleading or document for which, despite the DIP Notes Parties' best efforts, such advance notice is impracticable, the DIP Notes Parties shall be required to furnish such documents as soon as reasonably practicable and in no event later than substantially concurrently with such filings or deliveries thereof, as applicable), including any monthly reporting by the DIP Secured Parties to the Bankruptcy Court and/or the DIP Trustee, Milbank LLP and any requesting counsel to a DIP Noteholder.

(k) At the reasonable request of the DIP Noteholders, at any time mutually agreed between the DIP Issuers and the DIP Noteholders, an officer of the DIP Issuers identified by the Required DIP Noteholders (or, at the request of the Required DIP Noteholders, the Consultants) and any Debtors' Professional identified by the DIP Noteholders shall participate in a conference call with the DIP Noteholders (which may include the DIP Trustee) to discuss the operations, financial position, results of operations, business plan and liquidity of the DIP Issuers and their Subsidiaries.

(l) The DIP Issuers shall permit the financial advisors of the DIP Noteholders to visit and inspect any of its, and its Subsidiaries', properties, to examine its corporate, financial and operating records, including, without limitation, historical records and information, and make copies thereof or

abstracts therefrom and to discuss its affairs, finances, accounts, strategic planning, cash and liquidity management, and operational and restructuring activities, with its directors, officers and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the DIP Issuers and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the DIP Issuers.

(m) Promptly after a Responsible Officer of the DIP Issuers or the DIP Guarantors has obtained knowledge thereof, notify the DIP Trustee in writing:

(i) of the occurrence of any Default;

(ii) of the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority (other than the Chapter 11 Cases), (i) against any DIP Issuer or any DIP Guarantor, or any Subsidiary or Affiliate thereof, that would reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any DIP Document or Prepetition Debt Document; and

(iii) the occurrence of any Notification Event, as defined in the DIP Note Purchase Agreement, that, alone or together with any other Notification Events that have occurred, would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this clause (m) shall be accompanied by a written statement of a Responsible Officer of the DIP Issuers (x) that such notice is being delivered pursuant to subclause (i), (ii) or (iii), as applicable, of this Section 4.02(m), setting forth details of the occurrence referred to therein and stating what action the DIP Issuers have taken and proposes to take with respect thereto.

SECTION 4.03. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, "incur" and collectively, an "incurrence") with respect to any Indebtedness (including Acquired Indebtedness) and the DIP Issuers shall not issue any shares of Disqualified Stock and shall not permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock;

(b) Section 4.03(a) shall not apply to:

(i) Indebtedness incurred pursuant to the Prepetition ABL Facility or the ABL DIP Facility, as applicable, by a DIP Issuer or a DIP Guarantor; *provided* that immediately after giving effect to any such incurrence, the aggregate principal amount of all Indebtedness under the Prepetition ABL Facility and the ABL DIP Facility then outstanding, less the aggregate principal amount of DIP Notes repaid substantially concurrently with such incurrence, does not exceed $10.0 million;

(ii) the incurrence by any DIP Issuer and any DIP Guarantor of (x) Indebtedness represented by the aggregate principal amount of DIP Notes issued to the DIP Noteholders and the DIP Guarantee related thereto, and (y) the Carve-Out;

(iii) Indebtedness of the DIP Issuers and their Restricted Subsidiaries in existence on the Initial Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.03(b)) and listed on Schedule 1 hereto;

(iv) [Reserved];

(v) Indebtedness incurred by the DIP Issuers or any of their Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees, bankers acceptances, warehouse receipts or similar instruments issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims; *provided, however*, that upon the drawing of such letters of credit or the incurrence of such Indebtedness, such obligations are reimbursed within 30 Business Days following such drawing or incurrence;

(vi) Indebtedness of a DIP Issuer to a DIP Guarantor; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in such DIP Guarantor ceasing to be a DIP Guarantor or any other subsequent transfer of any such Indebtedness (except to a DIP Issuer or another DIP Guarantor or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vi);

(vii) Indebtedness of a DIP Guarantor to a DIP Issuer or another DIP Guarantor; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such other DIP Guarantor ceasing to be a DIP Guarantor or any subsequent transfer of any such Indebtedness (except to a DIP Issuer or another DIP Guarantor or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an incurrence of such Indebtedness not permitted by this clause (vii);

(viii) [Reserved];

(ix) [Reserved];

(x) obligations (including reimbursement obligations with respect to letters of credit, bank guarantees or other similar instruments) in respect of performance, bid, appeal and surety bonds and performance and completion guarantees or obligations in respect of letters of credit related thereto provided by the DIP Issuers or any of their Restricted Subsidiaries in the ordinary course of business or consistent with past practice or industry practices;

(xi) [Reserved],

(xii) (1) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within five Business Days of its incurrence and (2) Indebtedness in respect of any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card,

electronic funds transfer and other cash management arrangements entered into in the ordinary course of business;

(xiii) [Reserved];

(xiv) [Reserved];

(xv) Indebtedness of the DIP Issuers or any of their Restricted Subsidiaries consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;

(xvi) [Reserved];

(xvii) [Reserved];

(xviii) [Reserved];

(xix) [Reserved];

(xx) [Reserved]; and

(xxi) to the extent constituting Indebtedness, all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xx) above.

Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock for purposes of this Section 4.03. DIP Guarantee of, or obligations in respect of letters of credit relating to, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was in compliance with this Section 4.03.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the U.S. dollar-equivalent principal amount or liquidation preference, as applicable, of Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term debt, or first committed or first incurred (whichever yields the lower U.S. dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is incurred or Disqualified Stock or Preferred Stock is issued, to extend, replace, refund, refinance, renew or defease other Indebtedness, Disqualified Stock or Preferred Stock, as applicable, denominated in a foreign currency, and such extension, replacement, refunding, refinancing, renewal or defeasance would cause the applicable U.S. dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such extension, replacement, refunding, refinancing, renewal or defeasance, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount or liquidation preference, as applicable, of such Disqualified Stock or Preferred Stock does not exceed (x) the principal amount or liquidation preference, as applicable, of such Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being extended replaced, refunded, refinanced, renewed or defeased plus (y) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums) and other costs and

expenses (including original issue discount, upfront fees or similar fees) incurred in connection with such refinancing.

The principal amount of any Indebtedness, Disqualified Stock or Preferred Stock incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The DIP Issuers shall not, and shall not permit any DIP Guarantor to, directly or indirectly, incur any Indebtedness (including Acquired Indebtedness) that is contractually subordinated or junior in right of payment to any Indebtedness of the DIP Issuers or such DIP Guarantor, as the case may be, unless such Indebtedness is expressly subordinated in right of payment to the DIP Notes or the DIP Guarantor's DIP Guarantee to the extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the DIP Issuers or such DIP Guarantor, as the case may be.

For purposes of this DIP Indenture, Indebtedness that is unsecured is not deemed to be subordinated or junior to Secured Indebtedness merely because it is unsecured, and senior indebtedness is not deemed to be subordinated or junior to any other senior indebtedness merely because it has a junior priority lien with respect to the same collateral or because it is secured by different collateral or issued or guaranteed by other obligors.

SECTION 4.04. Limitation on Restricted Payments.

(a) The DIP Issuers shall not, and shall not permit any of the Restricted Subsidiaries to, directly or indirectly (all such payments and other actions set forth in clauses (i) through (iv) below being collectively referred to as "Restricted Payments"):

(i) declare or pay any dividend or make any other payment or any distribution on account of the DIP Issuers' or any of their Restricted Subsidiaries' Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger or consolidation (other than: (A) dividends or distributions by the DIP Issuers payable solely in Equity Interests (other than Disqualified Stock) of the DIP Issuers or in options, warrants or other rights to purchase such Equity Interests (other than Disqualified Stock); or (B) dividends or distributions by a Restricted Subsidiary so long as, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly-Owned Subsidiary, the DIP Issuers or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the DIP Issuers, any direct or indirect parent of the DIP Issuers or any Subsidiaries, including in connection with any merger or consolidation, in each case held by Persons other than the DIP Issuers or a Restricted Subsidiary;

(iii) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment, sinking fund payment or maturity, any Subordinated Indebtedness or any Prepetition Secured Obligations (or any obligation having an equal or lower lien priority with respect to any assets of the DIP Issuers or its Subsidiaries) of the DIP Issuers or any Restricted Subsidiary, other than (x) the payment, redemption, repurchase, defeasance, acquisition or retirement

for value of existing indebtedness listed on Schedule 1 hereto that is Subordinated Indebtedness, with respect to the satisfaction of a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement and (y) pursuant to the Bankruptcy Court DIP Order; or

(iv) make any Restricted Investment.

(b) The amount of any Restricted Payments not in cash will be the Fair Market Value on the date of such Restricted Payment of the property, assets or securities proposed to be paid, transferred or issued by the DIP Issuers or the relevant Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment.

SECTION 4.05. Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries. The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries that are not a DIP Guarantor to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to the DIP Issuers or any of their Restricted Subsidiaries that is a DIP Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits; or (ii) pay any Indebtedness owed to the DIP Issuers, in the case of a Restricted Subsidiary that is not a DIP Guarantor, to any Restricted Subsidiary that is a DIP Guarantor;

(b) make loans or advances to the DIP Issuers or, in the case of a Restricted Subsidiary that is not a DIP Guarantor, to any Restricted Subsidiary that is a DIP Guarantor; or

(c) sell, lease or transfer any of its properties or assets to the DIP Issuers or, in the case of a Restricted Subsidiary that is not a DIP Guarantor, to any Restricted Subsidiary that is a DIP Guarantor;

except in each case for such encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions in effect on the Initial Issue Date related to existing indebtedness listed on Schedule 1 attached hereto;

(2) this DIP Indenture, the DIP Notes, the related DIP Guarantee, the DIP Security Documents and the security documents in respect of the DIP Obligations;

(3) purchase money obligations for property acquired and Financing Lease Obligations in the ordinary course of business that impose restrictions of the nature discussed in clause (c) above on the property or assets so acquired;

(4) applicable law or any applicable rule, regulation or order;

(5) any agreement or other instrument of a Person acquired by the DIP Issuers or any of their Restricted Subsidiaries in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired and its Subsidiaries;

(6) contracts or agreements for the sale of assets, including any restrictions with respect to a Subsidiary of the DIP Issuers pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of such Subsidiary, permitted under this DIP Indenture;

(7) [Reserved];

(8) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(9) [Reserved];

(10) customary provisions contained in leases, subleases, licenses or sublicenses or asset sale agreements and other similar agreements, in each case, entered into in the ordinary course of business;

(11) any encumbrances or restrictions of the type referred to in Sections 4.05(a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (10) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the DIP Issuers, no more restrictive in any material respect with respect to such encumbrances and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(12) customary provisions restricting assignment of any agreement entered into in the ordinary course of business;

(13) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under Section 4.06 pending the consummation of such sale, transfer, lease or other disposition; and

(14) customary restrictions and conditions contained in the document relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this clause (14).

For purposes of determining compliance with this Section 4.05, (1) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (2) the subordination of loans or advances made to the DIP Issuers or a Restricted Subsidiary to other Indebtedness incurred by the DIP Issuers or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

SECTION 4.06. Asset Sales.

(a) The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries to, consummate an Asset Sale (including a Sale and Lease-Back Transaction), unless:

(i) the DIP Issuers or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of; and

(ii) 100% of the consideration therefor received by the DIP Issuers or a DIP Guarantor, as the case may be, is in the form of Cash Equivalents; *provided* that the amount of:

(1) any liabilities (as shown on the DIP Issuers' or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or, if incurred or increased subsequent to the date of such balance sheet, such liabilities that would have been shown on the DIP Issuers' or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such incurrence or increase had taken place on or prior to the date of such balance sheet, as determined by the DIP Issuers), contingent or otherwise, of the DIP Issuers or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the DIP Notes, that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee and for which the DIP Issuers and all of their Restricted Subsidiaries have been validly released by all creditors in writing, and

(2) any securities, notes or other obligations or assets received by the DIP Issuers or such Restricted Subsidiary from such transferee that are converted by the DIP Issuers or such Restricted Subsidiary into Cash Equivalents (to the extent of the Cash Equivalents received) within 30 days following the closing of such Asset Sale,

shall be deemed to be Cash Equivalents for the purposes of this Section 4.06(a); and

(iii) such Asset Sale does not include any intellectual property, permits or licenses (or any rights therein) that are material to the conduct of the business of the DIP Issuers or and their Restricted Subsidiaries, taken as a whole; and

(iv) such Asset Sale is in the ordinary course of business.

(b) Within 60 days after the receipt of Net Proceeds from any Asset Sale which cumulatively, with the Net Proceeds of any previous Assets Sales (excluding any Net Proceeds (i) voluntarily applied to redeem the DIP Notes or (ii) of ABL Priority Collateral that are required to be applied to repay outstanding Indebtedness in respect of the DIP ABL Obligations), exceeds $1.0 million (the "Asset Sale Offer Threshold"), the DIP Issuers shall ratably redeem a ratable portion of the outstanding principal amount of DIP Notes, plus accrued and unpaid interest to, but not including, the date fixed for redemption, in accordance with the procedures set forth in this DIP Indenture. The DIP Issuers will commence such redemption by mailing an irrevocable notice of redemption, with a copy to the DIP Trustee.

To the extent that the aggregate amount of DIP Notes redeemed pursuant to this Section 4.06(b) is less than the Asset Sale Offer Threshold, the DIP Issuers may use such Net Proceeds for general corporate purposes, subject to compliance with other covenants contained in this DIP Indenture and such Net Proceeds shall no longer be included for purposes of determining the Asset Sale Offer Threshold. Pending the final application of any Net Proceeds, the Company shall deposit such Net Proceeds in an account in which the Collateral Agent has a perfected security interest for the benefit of the DIP Secured Parties.

SECTION 4.07. Transactions with Affiliates.

(a) The DIP Issuers shall not, and shall not permit any of their Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of their properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the DIP Issuers.

(b) Section 4.07(a) shall not apply to the following:

(i) transactions between or among the DIP Issuers or any of their Restricted Subsidiaries otherwise permitted under this DIP Indenture;

(ii) Permitted Investments; *provided* that (x) with respect to a Permitted Investment or series of Permitted Investments involving an Affiliate that is not the DIP Issuers or their Subsidiaries and aggregate payments or consideration of less than $500,000, in the good faith judgment of senior management of the DIP Issuers, as evidenced by an Officer's Certificate delivered to the DIP Trustee, such Permitted Investment is on terms that are not less favorable to the DIP Issuers or their relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the DIP Issuers or such Restricted Subsidiary with an unrelated Person on an arm's-length basis and (y) with respect to transactions or series of transactions involving aggregate payments or consideration of $500,000 or more, the DIP Issuers deliver to the DIP Trustee (A) a resolution adopted by the majority of the disinterested board of directors of Anagram LLC, in consultation with the Consultants, approving such Permitted Investment and a related Officer's Certificate certifying that such Permitted Investment is on terms that are not less favorable to the DIP Issuers or their relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the DIP Issuers or such Restricted Subsidiary with an unrelated Person on an arm's-length basis or (B) if there are no disinterested members of the board of directors of Anagram LLC, a resolution adopted by all of the members of the board of directors of Anagram LLC approving such Permitted Investment and a related Officer's Certificate certifying that such Permitted Investment is on terms that are not less favorable to the DIP Issuers or their relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the DIP Issuers or such Restricted Subsidiary with an unrelated Person on an arm's-length basis;

(iii) the payment of reasonable and customary fees and reimbursement of reasonable expenses and compensation paid to, and indemnities provided on behalf of or for the benefit of, future, present or former employee, officer, director, member of management or consultant (or the estate, heirs, family members, spouse, former spouse, domestic partner or former domestic partner of any of the foregoing) of the DIP Issuers or any of their Restricted Subsidiaries;

(iv) any agreement as in effect as of the Initial Issue Date and listed on Schedule 3 hereto, or any amendment thereto or replacement thereof approved, to the extent required pursuant to Section 4.24 or the Stalking Horse Asset Purchase Agreement, by each of the Consultants (so long as any such amendment or replacement is not disadvantageous to the Holders as compared to the applicable agreement as in effect on the Initial Issue Date) or the Required DIP Noteholders or any transaction contemplated thereby as determined in good faith by the DIP Issuers;

(v) transactions with customers, clients, suppliers, contractors, or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or that are consistent with past practice and otherwise in compliance with the terms of this DIP Indenture which are fair to the DIP Issuers and their Restricted Subsidiaries, in the reasonable determination of the board of directors of the DIP Issuers and, with respect transaction pursuant to this clause (v) with an Affiliate that is not the DIP Issuers or their Subsidiaries and a value of $500,000 or more, in consultation with the Consultants, or are on terms at least as favorable as would reasonably have been obtained at such time from an unaffiliated party on an arm's length basis;

(vi) [Reserved];

(vii) [Reserved];

(viii) The issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans approved by a majority of the disinterested members of the board of directors of the DIP Issuers in good faith, each in their sole discretion;

(ix) transactions undertaken in good faith (as certified by a responsible financial or accounting officer of the DIP Issuers in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the DIP Issuers and their Subsidiaries and not for the purpose of circumventing any covenant set forth in this DIP Indenture; provided that such transaction has been undertaken after consultation with the Consultants and, with respect to any transaction described in this clause (ix) with PCHI or its Affiliates (other than the DIP Issuers and their Subsidiaries), with the written consent of the Required DIP Noteholders; and

(x) transactions pursuant to or required by the Intra-Company Agreements.

SECTION 4.08. [Reserved].

SECTION 4.09. Compliance Certificate.

(a) The DIP Issuers shall deliver to the DIP Trustee within 30 days after the end of each fiscal year of the DIP Issuers, beginning with the fiscal year ending on or about December 31, 2023, a certificate (the signer of which shall be the principal executive officer, the principal financial officer or the principal accounting officer of the DIP Issuers) stating that in the course of the performance by the signer of the signer's duties as an Officer of the DIP Issuers the signer would normally have knowledge of any Default and whether or not the signer knows of any Default that occurred during such period. If the signer does, the certificate shall describe the Default, its status and the action the DIP Issuers are taking or propose to take with respect thereto.

(b) The DIP Issuers shall, so long as any DIP Notes are outstanding, deliver to the DIP Trustee and the Collateral Agent, within one Business Day after any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the DIP Issuers are taking or propose to take with respect thereto.

(c) Together with the delivery of each officer's certificate delivered pursuant to Section 4.09(a) hereof, the DIP Issuers shall deliver to the Collateral Agent a Perfection Certificate Supplement (as defined in the Security Agreement), either confirming that there has been no change in the information contained in the Perfection Certificate (as defined in the Security Agreement) delivered on the Initial Issue Date, or the date on which the most recent Perfection Certificate Supplement was delivered to the Collateral Agent, or identifying changes to such information previously disclosed.

SECTION 4.10. Further Instruments and Acts. Upon request of the DIP Trustee, the DIP Issuers shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this DIP Indenture.

SECTION 4.11. [Reserved]

SECTION 4.12. Liens. The DIP Issuers shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create, incur, assume or suffer to exist any Lien (except Permitted Liens) that secures obligations under any Indebtedness or any related guarantee, on any asset or property of the DIP Issuers or any Restricted Subsidiary, or any income or profits therefrom, or assign or convey any right to receive income therefrom.

The expansion of Liens by virtue of accrual of interest, the accretion of accreted value, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 4.12.

SECTION 4.13. Maintenance of Office or Agency.

(a) The DIP Issuers shall maintain an office or agency (which may be an office of the DIP Trustee or an affiliate of the DIP Trustee or Registrar) where DIP Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the DIP Issuers in respect of the DIP Notes and this DIP Indenture may be served. The DIP Issuers shall give prompt written notice to the DIP Trustee of the location, and any change in the location, of such office or agency. If at any time the DIP Issuers shall fail to maintain any such required office or agency or shall fail to furnish the DIP Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the corporate trust office of the DIP Trustee as set forth in Section 12.01; *provided* that no service of legal process may be made against the DIP Issuers at any office of the DIP Trustee.

(b) The DIP Issuers may also from time to time designate one or more other offices or agencies where the DIP Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the DIP Issuers of their obligation to maintain an office or agency for such purposes. The DIP Issuers shall give prompt written notice to the DIP Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The DIP Issuers hereby designate the corporate trust office of the DIP Trustee or its agent as such office or agency of the DIP Issuers in accordance with Section 2.04.

SECTION 4.14. Minimum Liquidity. The DIP Issuers shall at all times maintain Unrestricted Cash on a consolidated basis of not less than U.S. $1.0 million. The DIP Issuers shall deliver to the DIP Trustee not later than the applicable dates on which financial statements of the DIP Issuers relating to such period are due in accordance with this DIP Indenture an Officer's Certificate confirming compliance with this Section 4.14. The DIP Issuers shall deliver to the DIP Trustee and the Collateral

Agent, within five Business Days after any Default in compliance with this Section 4.14, an Officer's Certificate specifying such Default and what action the DIP Issuers are taking or propose to take with respect thereto. The DIP Trustee shall send to each Holder notice of such Default within five Business Days of the DIP Trustee's receipt of such written notice.

SECTION 4.15. Intra-Company Agreements. The Intra-Company Agreements shall not be amended, modified or otherwise changed, or the rights of the DIP Issuers or the obligations of the counterparties thereto waived, in each case, in any manner that is adverse in any material respect to the DIP Issuers or the Holders.

SECTION 4.16. Use of Proceeds. Subject to the following sentence, the proceeds of the DIP Notes shall be applied in accordance with the Approved Budget (subject to Permitted Variances) and the terms of the Bankruptcy Court DIP Order and the DIP Documents. No part of the Cash Collateral of the DIP Issuers or the DIP Guarantors, the proceeds of the DIP Notes, the DIP Collateral or the Carve-Out will be used, whether directly or indirectly:

(a) for any purpose that is prohibited under the Bankruptcy Code or the Bankruptcy Court DIP Orders;

(b) to finance or reimburse for expenses incurred or to be incurred, in both instances, directly or directly and in any way: (i) any adversary action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of any or all of the DIP Secured Parties or their respective rights and remedies under the DIP Documents or the Bankruptcy Court DIP Orders or, subject to the Bankruptcy Court DIP Orders, the Prepetition 1L Secured Parties or the Prepetition 2L Secured Parties, or (ii) any other action which with the giving of notice or passing of time would result in an Event of Default under the DIP Documents;

(c) for the payment of fees, expenses, interest, or principal under the Prepetition Secured Obligations (other than adequate protection and other payments permitted under the Bankruptcy Court DIP Orders);

(d) to make any distributions under a Plan of Reorganization in the Chapter 11 Cases that does not provide for the indefeasible payment of the DIP Notes in full and in cash; and

(e) except as permitted by the Approved Budget (including Permitted Variances) to make any payment in settlement of any claim, action or proceeding in excess of $50,000 in the aggregate without the prior written consent of the DIP Trustee, acting at the written direction of the Required DIP Noteholders;

provided that, advisors to any creditor's committee appointed in the Chapter 11 Cases may investigate the liens granted pursuant to, or any claims under or causes of action with respect to, the DIP Documents, Prepetition 1L Obligations or Prepetition 2L Obligations at an aggregate expense for such investigation not to exceed $100,000, provided that no portion of such amount may be used to prosecute any claims.

Nothing herein shall in any way prejudice or prevent the DIP Trustee or the DIP Noteholders from objecting, for any reason, to any requests, motions, or applications made in the Bankruptcy Court, including any application of final allowances of compensation for services rendered or reimbursement of expenses incurred under Sections 105(a), 330 or 331 of the Bankruptcy Code, by any party in interest (and each such order shall preserve the DIP Trustee's and the DIP Noteholders' right to review and object to any such requests, motions or applications).

SECTION 4.17. Budget and Variance Report. Each Budget shall be prepared in good faith based on assumptions believed by the DIP Notes Parties to be reasonable at the time made and upon information believed by the management of the DIP Issuers to have been accurate based upon the information available to the management of the DIP Issuers at the time such Budget was furnished. On and after the delivery of any Variance Report in accordance with this DIP Indenture, such Variance Report shall be complete and correct and fairly represent in all material respects the results of operations of the DIP Notes Parties and their Subsidiaries, on a consolidated basis, for the period covered thereby and in the detail to be covered thereby.

SECTION 4.18. Limitation on Anagram LLC Activities. Anagram LLC shall not (a) incur, directly or indirectly, any Indebtedness other than (i) the DIP Notes or (ii) other Indebtedness permitted under this DIP Indenture; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it other than (i) the Liens created in connection with the issuance of the DIP Notes or the DIP Documents or (ii) Permitted Liens on the DIP Collateral; (c) engage in any business activity or own any material assets other than (i) holding 100.0% of the Capital Stock of the Company and, indirectly, any other Subsidiary of the Company, (ii) performing its DIP Obligations under this DIP Indenture, the Prepetition 1L Notes Documents, the Prepetition 2L Notes Documents and the Prepetition Debt Documents and other Indebtedness, Liens and Guarantees permitted hereunder, (iii) such activities necessary to maintain its corporate existence, and (iv) activities incidental to the foregoing clauses (c)(i) through (c)(iv); (d) form, acquire or own any Subsidiary (other than Anagram International or Anagram International Holdings, Inc.) or own any Equity Interests in any other entity, or make any Investment in any Person, other than Equity Interests and Investments existing on the Initial Issue Date and listed on Schedule 2 hereto; or (e) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

SECTION 4.19. Further Assurances. Promptly upon reasonable request by the DIP Trustee or the Collateral Agent, in each case, at the written direction of the Required DIP Noteholders, (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any DIP Collateral Document or other document or instrument relating to any DIP Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the DIP Trustee may reasonably request from time to time in order to carry out more effectively the purposes of the DIP Collateral Documents, to the extent required pursuant to the DIP Collateral and Guarantee Requirement.

SECTION 4.20. Burdensome Agreements; Prepayments of Indebtedness.

(a) The DIP Issuers shall not, and shall not permit any Subsidiary to, (i) make any payment of principal or interest or otherwise on account of any Prepetition Secured Obligations or payables under the Prepetition Debt Documents other than (A) payments made in compliance in all material respects with the Approved Budget (subject to Permitted Variances), (B) payments agreed to in writing by the Required DIP Noteholders, (C) payments approved by the Bankruptcy Court DIP Order or, if necessary, authorized by the Bankruptcy Court (including any adequate protection payment) or (ii) amend or modify the terms of the Prepetition Debt Documents in a manner that is materially adverse to the DIP Trustee or the other DIP Secured Parties or their rights and remedies under the DIP Documents (including any such amendment or modification that would have a material and adverse impact on any material portion of the DIP Collateral) except as authorized by the Bankruptcy Court DIP Order; or

(b) Neither shall the DIP Issuers, nor shall the DIP Issuers permit any of their Subsidiaries to, permit any Subsidiary to enter into any agreement or instrument that by its terms restricts

the granting of Liens by such Subsidiary pursuant to the DIP Collateral Documents, in each case other than those arising under any DIP Document, except, in each case, restrictions existing by reason of:

(i) restrictions imposed by applicable Law;

(ii) [Reserved];

(iii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business;

(iv) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this DIP Indenture to the extent that such restrictions apply only to the property or assets securing such Indebtedness;

(v) customary provisions contained in leases or licenses of intellectual property and other similar agreements entered into in the ordinary course of business;

(vi) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(vii) customary provisions restricting assignment of any agreement entered into in the ordinary course of business; or

(viii) customary restrictions and conditions contained in any agreement relating to the sale of any asset permitted under Section 6.05 pending the consummation of such sale.

SECTION 4.21. Chapter 11 Modifications. Except as permitted pursuant to the terms of this DIP Indenture and the Bankruptcy Court DIP Order or otherwise consented to by the Required DIP Noteholders and the DIP Trustee at the direction of the Required DIP Noteholders, the DIP Issuers shall not, and shall not permit any of their Subsidiaries to:

(a) make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment or modification, to the Bankruptcy Court DIP Order;

(b) incur, create, assume or suffer to exist or permit any other superpriority claim which is pari passu with or senior to the DIP Superpriority Claims of the DIP Trustee, the Collateral Agent and the DIP Noteholders hereunder, except for the Carve-Out; or

(c) assert any right of subrogation or contribution against any other DIP Notes Party.

SECTION 4.22. Covenant to Guarantee DIP Obligations and Give Security. At the DIP Issuers' expense, subject to the provisions of the DIP Collateral and Guarantee Requirement and any applicable limitation in any DIP Collateral Document, the DIP Issuers shall take all action necessary or reasonably requested by the DIP Trustee or the Collateral Agent to ensure that the DIP Collateral and Guarantee Requirement continues to be satisfied, including upon the formation or acquisition of any new direct or indirect wholly owned Subsidiary by any DIP Notes Party, ensuring that such Subsidiary become a DIP Guarantor under the DIP Collateral and Guarantee Requirement.

SECTION 4.23. Other Covenants.

(a) Each DIP Notes Party shall comply in all respects with each order entered by the Bankruptcy Court in the Chapter 11 Cases.

(b) Absent the consent of the Required DIP Noteholders, the DIP Issuers shall not, and shall not permit any Restricted Subsidiary to, (i) assume or reject any executory contract or unexpired lease or (ii) consent to the termination or modification of the exclusive right of any DIP Notes Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code.

(c) The DIP Notes Parties shall not, and shall cause their Subsidiaries not to, amend, modify or waive any of its rights under its certificate of incorporation, by-laws, operating, management or partnership agreement or other Organizational Documents to the extent any such amendment, modification or waiver would be adverse to the DIP Noteholders except as required by the Bankruptcy Code; provided that immaterial amendments, including amendments of an administrative, ministerial or technical nature, which are not adverse to the DIP Noteholders may be made.

(d) The DIP Notes Parties shall not file a motion seeking an order (i) approving payment of any prepetition claim other than (x) as provided for in the "first day" or "second day" orders, (y) contemplated by the Approved Budget (including Permitted Variances), or (z) otherwise consented to by the Required DIP Noteholders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of $50,000 in the aggregate, or (iii) except with respect to the Debtors' stipulations as provided in the Bankruptcy Court DIP Order, approving any settlement or other stipulation in excess of $50,000 in the aggregate not approved by the Required DIP Noteholders and not included in the Approved Budget with any secured creditor of any DIP Notes Party providing for payments as adequate protection or otherwise to such secured creditor.

(e) To the extent reasonably practicable, at least one (1) calendar day prior to issuance thereof (or such later time in light of exigent circumstances), the DIP Issuers shall provide the DIP Trustee and the DIP Noteholders drafts of any press releases or other public statements regarding the DIP Notes, the Chapter 11 Cases, or the Debtors' businesses, which press releases or public statements, as the case may be, shall be revised by the DIP Issuers acting in good faith, to include all reasonable comments of the DIP Noteholders prior to release thereof.

SECTION 4.24. Consultants. With respect to the Consultants:

(a) Each Consultant shall (x) have full access to the DIP Notes Parties' information and employees, including management, and (y) be included in discussions and consulted on all management decisions with respect to any material operational matters of the DIP Notes Parties; and

(b) the DIP Notes Parties will not (x) hire or terminate any members of the executive team, or (y) enter into any contract, agreement or commitment for aggregate liability for the DIP Notes Parties in excess of $500,000, which has a term in excess of six months, in each case, without prior consultation of the Consultants.

ARTICLE 5

MERGER

SECTION 5.01. Merger, Consolidation or Sale of All or Substantially All Assets.

(a) The DIP Issuers shall not consolidate or merge with or into or wind up into (whether or not the DIP Issuers are the surviving corporations), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of their properties or assets, in one or more related transactions, to any Person without the consent of the Required DIP Noteholders, except the Approved Sale.

(b) No DIP Guarantor shall, and the DIP Issuers shall not permit any DIP Guarantor to, consolidate or merge with or into or wind up into (whether or not the DIP Issuers or DIP Guarantor is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of their properties or assets in one or more related transactions to, any Person unless:

(i) (A) such DIP Guarantor is the surviving Person or the Person formed by or surviving any such consolidation or merger (if other than such DIP Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the jurisdiction of organization of such DIP Guarantor, as the case may be, or the laws of the United States, any state thereof, the District of Columbia or any territory thereof (such DIP Guarantor or such Person, as the case may be, being herein called the "Successor Person"), (B) the Successor Person (if other than such DIP Guarantor) expressly assumes all the obligations of such DIP Guarantor under this DIP Indenture and such DIP Guarantor's DIP Guarantee pursuant to a supplemental indenture or other documents or instruments, (C) both immediately before and immediately after such transaction, no Default exists, and (D) the Successor Person shall have delivered to the DIP Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indentures, if any, comply with this DIP Indenture;

(ii) the Successor Person, if other than such DIP Guarantor, executes and delivers to the Collateral Agent a Grantor Supplement pursuant to which such Successor Person shall be subject to the terms of the applicable DIP Security Documents, and concurrently with the execution and delivery of such Grantor Supplement, the DIP Issuers shall deliver to the DIP Trustee an Opinion of Counsel and an Officer's Certificate to the effect that such Grantor Supplement has been duly authorized, executed and delivered by such Successor Person and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the security interest of such Successor Person is a valid and binding obligation of such Successor Person, enforceable against such Successor Person in accordance with its terms and/or to such other matters as the DIP Trustee may reasonably request; or

(iii) the transaction is otherwise permitted by this DIP Indenture, including any transaction consummated in compliance with clauses (i) and (ii) of Section 4.06(a) hereof.

Except as otherwise provided in this DIP Indenture, the Successor Person (if other than such DIP Guarantor) (x) will succeed to, and be substituted for, such DIP Guarantor under this DIP Indenture and such DIP Guarantor's DIP Guarantee, and upon the satisfaction by the Successor Person of its obligations under clause (y) below such DIP Guarantor will automatically be released and discharged from its obligations under this DIP Indenture and such DIP Guarantor's DIP Guarantee and (y) execute and deliver to the Collateral Agent a supplemental indenture in the form of Exhibit C pursuant to which such Successor Person shall guarantee the DIP Obligations, and concurrently with the execution and delivery of such supplemental indenture, the DIP Issuers shall deliver to the DIP Trustee an Opinion of Counsel in form and substance reasonably satisfactory to the DIP Trustee and an Officer's Certificate to the effect that

such supplemental indenture has been duly authorized, executed and delivered by such Successor Person and/or to such other matters as the DIP Trustee may reasonably request. Notwithstanding the foregoing, a DIP Guarantor may consolidate with or merge with or into or wind up into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Guarantor or the DIP Issuers.

SECTION 5.02. Successor Corporation Substituted. Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the DIP Issuers in accordance with Section 5.01 hereof, the successor corporation formed by such consolidation or into or with which the DIP Issuers are merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this DIP Indenture referring to the DIP Issuers shall refer instead to the successor corporation and not to the DIP Issuers), and may exercise every right and power of the DIP Issuers under this DIP Indenture with the same effect as if such Successor Person had been named as the DIP Issuers herein; *provided* that the predecessor DIP Issuers shall not be relieved from the obligation to pay the principal of and interest on the Securities except in the case of a sale, assignment, transfer, lease, conveyance or other disposition of all of the DIP Issuers' assets that meets the requirements of Section 5.01 hereof.

ARTICLE 6

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. An "Event of Default" with respect to the DIP Notes (including any Additional DIP Notes) occurs if:

(a) there is a default in payment when due and payable, upon redemption, acceleration or otherwise, of principal of, or premium, if any, on the DIP Notes;

(b) there is a default for 5 days or more in the payment when due of interest on or with respect to the DIP Notes;

(c) failure by the DIP Issuers to comply with Section 5.01, or to redeem the DIP Notes, if required, upon an Asset Sale;

(d) any DIP Issuer or any DIP Guarantor fails for 5 Business Days after receipt of written notice given by the DIP Trustee or the Holders of not less than 25% in principal amount of the DIP Notes (with a copy to the DIP Trustee) to comply with any of its obligations, covenants or agreements (other than a default referred to in clauses (a), (b), (c), (k), (l) and (m) of this Section 6.01) contained in this DIP Indenture, the DIP Notes or the DIP Security Documents;

(e) there occurs any Change of Control;

(f) the DIP Issuers or any Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the DIP Issuers), would constitute a Significant Subsidiary, fails to pay final judgments aggregating in excess of $1.0 million (net of amounts covered by insurance policies issued by insurance companies), which final judgments remain unpaid, undischarged, unwaived and unstayed for a period of more than 60 days after such judgment becomes final, and in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(g) [Reserved];

(h) [Reserved];

(i) the DIP Guarantee of any Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the DIP Issuers), would constitute a Significant Subsidiary, shall for any reason cease to be in full force and effect (except as contemplated by the terms thereof) or any Responsible Officer of the DIP Guarantor that is a Significant Subsidiary, or any group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the DIP Issuers), would constitute a Significant Subsidiary, as the case may be, denies that it has any further liability under its or their DIP Guarantee(s) or gives notice to such effect, other than by reason of the termination of this DIP Indenture or the release of any the DIP Guarantee in accordance with this DIP Indenture;

(j) except (a) as expressly permitted by this DIP Indenture and the applicable DIP Security Documents, (b) upon the Termination Date (as defined in the DIP Security Agreement) or the release of any such security interest in accordance with the terms of this DIP Indenture and the applicable DIP Security Documents, (c) to the extent that any loss of perfection or priority results from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the DIP Security Documents or to authorize any DIP Guarantor or the DIP Issuers to file Uniform Commercial Code amendments relating to any DIP Guarantor's or the DIP Issuers' change of name or jurisdiction of formation after the Collateral Agent having received prior written notice by the DIP Issuers of the same and (d) in accordance with the applicable DIP Security Document, if any material provision of the DIP Security Documents or the DIP Guarantee shall for any reason cease to be in full force and effect and such default continues for 30 days or the DIP Issuers shall so assert, or any security interest created, or purported to be created, by any of the DIP Security Documents shall cease to be enforceable with respect to any material portion of the DIP Collateral covered or purported to be covered thereby and such default continues for 30 days;

(k) there is a Default for four Business Days or more by the DIP Issuers in compliance with their obligations under Section 4.14;

(l) failure by the DIP Notes Parties to comply with Section 4.24 or the termination of one or both Consultants without the prior written consent of the Required DIP Noteholders;

(m) failure by the DIP Issuers to comply with Section 4.15;

(n) any DIP Notes Party shall file a motion in the Chapter 11 Cases without the express written consent of Required DIP Noteholders, to obtain additional financing from a party other than DIP Noteholders under Section 364(d) of the Bankruptcy Code that (i) is not permitted under Section 4.03 or (ii) does not provide for the payment of the DIP Obligations in full and in cash upon the incurrence of such additional financing;

(o) any DIP Notes Party shall file a motion seeking an order (i) approving payment of any prepetition claim other than (x) as provided for in the "first day" or "second day" orders, (y) contemplated by the Approved Budget (including Permitted Variances), or (z) otherwise consented to by the Required DIP Noteholders in writing, (ii) granting relief from the automatic stay under Section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure on any assets having a book value in excess of $50,000 in the aggregate, or (iii) except with respect to the Prepetition Secured Obligations as provided in the Bankruptcy Court DIP Order, approving any settlement or other stipulation not approved by the Required DIP Noteholders or not included in the Approved Budget with any secured

creditor of any DIP Notes Party providing for payments as adequate protection or otherwise to such secured creditor;

(p) an order is entered in any of the Chapter 11 Cases appointing, or any DIP Notes Party, or any Subsidiary of a DIP Notes Party shall file an application for an order seeking the appointment of, (i) a trustee under Section 1104, or (ii) an examiner with enlarged powers relating to the operation of the DIP Notes Parties' business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code;

(q) an order shall be entered by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, in each case, which does not contain a provision for termination of all commitments of the DIP Noteholders under the DIP Note Purchase Agreement, and payment in full in cash of all DIP Notes (including any Additional DIP Notes) (other than contingent indemnification obligations as to which no claim has been asserted) of the DIP Notes Parties hereunder and under the other DIP Documents upon entry thereof;

(r) an order is entered by the Bankruptcy Court in any of the Chapter 11 Cases without the express prior written consent of the Required DIP Noteholders and, with respect to any provisions that affect the rights and duties of the DIP Trustee, the DIP Trustee, (i) to revoke, reverse, stay, modify, supplement or amend the Bankruptcy Court DIP Order in a manner that is inconsistent with this DIP Indenture or (ii) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever), in each case other than as set forth in the Bankruptcy Court DIP Order, to have administrative priority as to the DIP Notes Parties equal or superior to the priority of the DIP Superpriority Claim shall be entered by the Bankruptcy Court;

(s) any DIP Notes Party violates any term, provision or condition in the Interim DIP Order or Final DIP Order, as applicable, provided that in the event such violation is immaterial and such violation has been cured within three Business Days after receipt by the DIP Issuers of written notice thereof from the DIP Trustee at the direction of the Required DIP Noteholders, such violation shall not constitute an Event of Default;

(t) an application for any of the orders described in clauses 6.01 (o), (p), (q) and (r) shall be made by a Person other than the DIP Notes Parties and such application is not contested by the DIP Notes Parties in good faith and such Person actually obtains entry of a final, nonappealable, order under Section 506(c) of the Bankruptcy Code against the DIP Trustee or the Collateral Agent or obtains a final, nonappealable, order materially adverse to the DIP Trustee, the Collateral Agent or the DIP Noteholders or any of their respective rights and remedies under the DIP Documents or in the DIP Collateral;

(u) the entry of an order by the Bankruptcy Court terminating or modifying the exclusive right of any DIP Notes Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required DIP Noteholders;

(v) (i) any DIP Notes Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of the Collateral Agent, the DIP Trustee and/or the DIP Noteholders, claims or rights against such Person or to subject any DIP Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by DIP Collateral Documents or the Bankruptcy Court DIP Orders with respect to the DIP Collateral shall, for any reason, on and after the entry of the Bankruptcy Court DIP Order, cease to be valid or (iii) any action is commenced by the DIP Notes Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of the Collateral Agent, the DIP Trustee and/or the DIP Noteholders created by any of the Bankruptcy Court DIP Order, this DIP Indenture, or any DIP Collateral Document;

(w) any DIP Notes Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing to another party-in-interest executed by or on behalf of such DIP Notes Party) any other Person's motion to, disallow in whole or in part the DIP Noteholders' claim in respect of the DIP Obligations or contest any material provision of any DIP Document or any material provision of any DIP Document shall cease to be effective (other than in accordance with its terms);

(x) any Plan of Reorganization or confirmation order is withdrawn, amended, supplemented or otherwise modified, pursuant to a pleading filed with the Bankruptcy Court that is not withdrawn within three Business Days, in a manner that materially adversely affects the rights and duties of the DIP Noteholders, the Collateral Agent and/or the DIP Trustee without the prior written consent of the Required DIP Noteholders, the Collateral Agent or the DIP Trustee, as applicable;

(y) the Bankruptcy Court denies confirmation of a Plan of Reorganization supported by the DIP Noteholders, provided, that if the DIP Notes Parties subsequently obtain an order of the Bankruptcy Court approving a plan of reorganization that either (i) proposes to repay all outstanding DIP Obligations in full, in cash, immediately upon the effectiveness thereof or (ii) otherwise is approved by the Required DIP Noteholders, an Event of Default shall not occur;

(z) the failure of the DIP Issuers or the Bankruptcy Court to timely satisfy any of the milestones on or before the following dates (or any later date approved by the Required DIP Noteholders in their sole discretion):

(i) no later than one (1) Business Day after the Petition Date, the Debtors shall have filed a motion to approve the bidding procedures with respect to a sale of their assets;

(ii) no later than four Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order;

(iii) no later than 21 calendar days after the Petition Date, the Bankruptcy Court shall have entered an order, in form and substance satisfactory to the Required DIP Noteholders, approving the Debtors' bid procedures;

(iv) no later than 35 calendar days after the Petition Date, the Bankruptcy Court shall have entered the Final DIP Order;

(v) no later than January 15, 2024, the Bankruptcy Court shall have entered an order in form and substance satisfactory to the Required DIP Noteholders (i) approving the sale of the Debtors' assets and (ii) approving the sale of the Debtors' assets which provides for the payment in full of the DIP Obligations or which is the Stalking Horse Bid (the "Approved Sale"); and

(vi) no later than January 28, 2024, the sale of the Debtors' assets shall have been consummated.

(aa) there occurs any Budget Event;

(bb) the proceeds of any DIP Notes shall have been expended in a manner not in accordance with the Approved Budget (subject to Permitted Variances);

(cc) any DIP Collateral Document with respect to a material portion of the DIP Collateral for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this DIP Indenture) ceases to create, a valid and perfected Lien with the priority required by the Bankruptcy Court DIP Order or the DIP Documents on and security interest in any material portion of the DIP Collateral purported to be covered thereby, subject to Liens permitted under Section 4.12, except to the extent that (i) any such perfection or priority is not required pursuant to the DIP Collateral and Guarantee Requirement or (ii) the loss thereof results from the failure of the DIP Trustee or the Collateral Agent to (a) maintain possession of DIP Collateral actually delivered to it and pledged under the DIP Collateral Documents or (b) file Uniform Commercial Code amendments relating to a DIP Notes Party's change of name or jurisdiction of formation (but solely to the extent that the DIP Issuers have timely provided the Collateral Agent written notice of such change of name or jurisdiction of formation thereof in accordance with the DIP Documents, and the Collateral Agent notifies the DIP Issuers that it will be responsible for filing such amendments) and continuation statements or to take any other action within its sole control with respect to the DIP Collateral and except as to DIP Collateral consisting of real property, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage;

(dd) a Material Adverse Effect arises due to restrictions on the ability of any of the DIP Notes Parties to access any material manufacturing facilities used in its business as of the DIP Order Entry Date and such restriction continues for 5 Business Days;

(ee) the Bankruptcy Court DIP Order is amended, supplemented, reversed, vacated, or otherwise modified without the prior written consent of the Required DIP Noteholders (and with respect to amendments, modifications or supplements that affect the rights or duties of the DIP Trustee, the DIP Trustee); or

(ff) except for the Approved Sale, the DIP Issuers attempts to consummate a sale of substantially all of its assets via a plan of reorganization or a 363 sale without consent of the Required DIP Noteholders.

In the event of any Event of Default specified in clause (d) above, such Event of Default and all consequences thereof (excluding any resulting payment default), other than as a result of acceleration of the DIP Notes (including any Additional DIP Notes) shall be annulled, waived and rescinded, automatically and without any action by the DIP Trustee or the Holders, if within 30 days after such Event of Default arose:

(i) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged; or

(ii) the requisite number of holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default; or

(iii) the default that is the basis for such Event of Default has been cured, waived or is no longer continuing.

SECTION 6.02. Acceleration. If any Event of Default occurs and is continuing under this DIP Indenture, the DIP Trustee, at the written direction of the Required DIP Noteholders, or the Holders of at least 25% in principal amount of the then total outstanding DIP Notes by notice to the DIP Issuers (with a copy to the DIP Trustee if from the Holders) may declare, without duplication, the principal, premium, if any, and accrued but unpaid interest and any other monetary obligations on all

the then outstanding DIP Notes to be due and payable in cash immediately. Upon the effectiveness of such declaration, such principal and interest shall be due and payable in cash immediately.

The Holders of a majority in aggregate principal amount of the then outstanding DIP Notes by written notice to the DIP Trustee (with a copy to the DIP Issuers; *provided* that any rescission under this Section 6.02 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the DIP Issuers) may on behalf of all of the Holders rescind an acceleration and its consequences:

(a) if the rescission would not conflict with any judgment or decree;

(b) if all existing Events of Default have been cured, waived, annulled or rescinded except nonpayment of principal or interest that has become due solely because of the acceleration;

(c) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(d) if the DIP Issuers have paid the DIP Trustee its reasonable compensation and reimbursed the DIP Trustee for its expenses, disbursements and advances.

SECTION 6.03. Other Remedies. If an Event of Default with respect to the DIP Notes occurs and is continuing, the DIP Trustee, at the written direction of the Required DIP Noteholders, may pursue any available remedy at law or in equity to collect the payment of principal of, premium, if any, or interest on the Securities or to enforce the performance of any provision of the DIP Notes or this DIP Indenture.

The DIP Trustee, at the written direction of Required DIP Noteholders, may maintain a proceeding even if it does not possess any of the DIP Notes or does not produce any of them in the proceeding. A delay or omission by the DIP Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent permitted by law, all available remedies are cumulative.

SECTION 6.04. Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the then outstanding DIP Notes by written notice to the DIP Trustee (with a copy to the DIP Issuers; *provided* that any waiver under this Section 6.04 shall be valid and binding notwithstanding the failure to provide a copy of such notice to the DIP Issuers) may on the behalf of all Holders waive an existing Default or Event of Default and its consequences, other than (a) a Default or Event of Default in the payment of the principal of, or premium, if any, or interest on, any DIP Notes, (b) [Reserved], or (c) any Default or Event of Default in respect of any provision of this DIP Indenture or the Securities which, under Section 9.02, cannot be modified or amended without the consent of the Holder of each outstanding Security affected. When a Default or Event of Default is so waived, it is deemed cured and the DIP Issuers, the DIP Trustee and the Holders will be restored to their former positions and rights under this DIP Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

SECTION 6.05. Control by Majority. The Holders of a majority in principal amount of the then outstanding DIP Notes may direct the time, method and place of conducting any proceeding for any remedy available to the DIP Trustee or of exercising any trust or power conferred on the DIP Trustee. However, the DIP Trustee may refuse to follow any direction that conflicts with law or

this DIP Indenture or, subject to Section 7.01, that the DIP Trustee determines is unduly prejudicial to the rights of any other Holder (it being understood that the DIP Trustee does not have an affirmative duty to ascertain whether or not such directions are unduly prejudicial to such Holder) or that would involve the DIP Trustee in personal liability. Prior to taking any action under this DIP Indenture, the DIP Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06. Limitation on Suits.

(a) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this DIP Indenture or the DIP Notes unless:

(i) Such Holder has previously given the DIP Trustee written notice that an Event of Default is continuing;

(ii) Holders of at least 25% in principal amount of the total outstanding Securities have requested the DIP Trustee, in writing, to pursue the remedy;

(iii) Holders of the DIP Notes have offered the DIP Trustee security or indemnity satisfactory to the DIP Trustee in the DIP Trustee's reasonable discretion against any loss, liability or expense;

(iv) the DIP Trustee has not complied with such request within 60 days after the receipt thereof and the offer of security or indemnity; and

(v) Holders of a majority in principal amount of the total outstanding Securities have not given the DIP Trustee a written direction inconsistent with such request within such 60-day period.

(b) A Holder may not use this DIP Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder (it being understood that the DIP Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

SECTION 6.07. Rights of the Holders to Receive Payment. Notwithstanding any other provision of this DIP Indenture, the right of any Holder to receive payment of principal of, premium, if any, and interest on the DIP Notes held by such Holder, on or after the respective due dates expressed or provided for in the DIP Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall be absolute and unconditional and such right shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by DIP Trustee. If an Event of Default specified in Section 6.01(a), (b) or (c) occurs and is continuing with respect to DIP Notes, the DIP Trustee may, at the direction of the Required DIP Noteholders, recover judgment in its own name and as trustee of an express trust against the DIP Issuers or any other obligor on the DIP Notes for the whole amount then due and owing (together with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in such DIP Notes) and the amounts provided for in Section 7.06.

SECTION 6.09. DIP Trustee May File Proofs of Claim. The DIP Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the

claims of the DIP Trustee (including any claim for reasonable compensation, expenses disbursements and advances of the DIP Trustee (including counsel, accountants, experts or such other professionals as the DIP Trustee deems necessary, advisable or appropriate)) and, at the written direction of the Required DIP Noteholders, the Holders of DIP Notes then outstanding allowed in any judicial proceedings relative to any DIP Issuer or any DIP Guarantor, its creditors or its property, shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the DIP Trustee and, in the event that the DIP Trustee shall consent to the making of such payments directly to the Holders, to pay to the DIP Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the DIP Trustee, its agents and its counsel, and any other amounts due the DIP Trustee under Section 7.06. Nothing in this DIP Indenture will be deemed to empower the DIP Trustee to authorize or consent to, or accept or adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the DIP Notes or the rights of any Holder thereof, or to authorize the DIP Trustee to vote in respect of the claim of any Holder in any such proceeding.

SECTION 6.10. Priorities. If the DIP Trustee or the Collateral Agent collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

FIRST: to the DIP Trustee (acting in any capacity hereunder) for amounts due under Section 7.06;

SECOND: to the Holders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the DIP Notes for principal, premium, if any, interest and all other amounts owed to the Holders hereunder; and

THIRD: to the DIP Issuers or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

The DIP Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section. At least 15 days before such record date, the DIP Trustee shall send to each Holder and the DIP Issuers a notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this DIP Indenture or in any suit against the DIP Trustee for any action taken or omitted by it as DIP Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the DIP Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the DIP Notes (including any Additional DIP Notes) then outstanding, and nothing in this Indenture or in the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or make such assessment in any suit by the DIP Trustee.

SECTION 6.12. Waiver of Stay or Extension Laws. Neither the DIP Issuers nor any DIP Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this DIP Indenture; and the DIP Issuers and each DIP Guarantor (to the extent that it may lawfully do so) hereby

expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the DIP Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE 7

TRUSTEE

SECTION 7.01. Duties of DIP Trustee.

(a) If an Event of Default has occurred and is continuing, the DIP Trustee shall exercise the rights and powers vested in it by this DIP Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs (provided that, for the avoidance of doubt, the DIP Trustee may request written direction from the Required DIP Noteholders (or such smaller subset of DIP Noteholders as appropriate under the circumstances, prior to exercising or otherwise taking any right, power, undertaking or obligation of the DIP Trustee under this Indenture, including with respect to exercising any right, power, undertaking or obligation upon an Event of Default)).

(b) Except during the continuance of an Event of Default:

(i) the DIP Trustee undertakes to perform such duties and only such duties as are specifically set forth in this DIP Indenture and no implied covenants or obligations shall be read into this DIP Indenture against the DIP Trustee (it being agreed that the permissive right of the DIP Trustee to do things enumerated in this DIP Indenture shall not be construed as a duty); and

(ii) in the absence of gross negligence, willful misconduct or bad faith on its part (as finally adjudicated in a final, nonappealable order by a court of competent jurisdiction), the DIP Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the DIP Trustee and conforming to the requirements of this DIP Indenture. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the DIP Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this DIP Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The DIP Trustee may not be relieved from liability for its own grossly negligent action (as finally adjudicated in a final, nonappealable order by a court of competent jurisdiction), its own grossly negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of paragraph (b) of this Section;

(ii) the DIP Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the DIP Trustee was grossly negligent in ascertaining the pertinent facts (as finally adjudicated in a final, nonappealable order by a court of competent jurisdiction);

(iii) the DIP Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this DIP Indenture, the DIP Notes shall require the DIP Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights, powers or duties unless the DIP Trustee receives adequate indemnity satisfactory to it against such risk or liability.

(d) [Reserved].

(e) The DIP Trustee shall not be liable for interest or investment income on any money received by it except as the DIP Trustee may agree in writing with the DIP Issuers.

(f) Money held in trust by the DIP Trustee need not be segregated from other funds except to the extent required by law.

(g) Every provision of this DIP Indenture relating to the conduct or affecting the liability of or affording protection to the DIP Trustee shall be subject to the provisions of this Section.

(h) Unless otherwise specifically provided in this DIP Indenture, any demand, request, direction or notice from the DIP Issuers will be sufficient if signed by an Officer of each DIP Issuer.

SECTION 7.02. Rights of DIP Trustee.

(a) The DIP Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The DIP Trustee need not investigate any fact or matter stated in the document.

(b) Before the DIP Trustee acts or refrains from acting upon any right, action or obligation under this indenture, it may require an Officer's Certificate or an Opinion of Counsel or both or otherwise require written direction from the Required DIP Noteholders (or such smaller subset of DIP Noteholders as applicable under the circumstances). The DIP Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The DIP Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The DIP Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers conferred upon it by this DIP Indenture; *provided*, *however*, that the DIP Trustee's conduct does not constitute gross negligence, willful misconduct or bad faith as determined by a nonappealable order of a court of competent jurisdiction.

(e) The DIP Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this DIP Indenture and the Securities shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(f) The DIP Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the Holders of not less than a majority in principal amount of the Securities at the time outstanding, but the DIP Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the DIP Trustee shall determine to make such further inquiry or investigation, it shall

be entitled to examine the books, records and premises of the DIP Issuers, personally or by agent or attorney, at the expense of the DIP Issuers and shall incur no liability of any kind by reason of such inquiry or investigation.

(g) The DIP Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this DIP Indenture at the request or direction of any of the Holders pursuant to this DIP Indenture, unless such Holders shall have offered to the DIP Trustee security or indemnity satisfactory to the DIP Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the DIP Trustee, including its right to be indemnified and its right to request direction from the Required DIP Noteholders (or such other subset of DIP Noteholders as applicable under the circumstances), are extended to, and shall be enforceable by, the DIP Trustee in each of its capacities hereunder (including as Collateral Agent, Paying Agent, Securities Custodian and Registrar), and each agent, custodian and other Person employed to act hereunder.

(i) The DIP Trustee shall not be liable for any action taken or omitted by it in good faith at the direction of the Holders of not less than a majority in principal amount of the outstanding Securities as to the time, method and place of conducting any proceedings for any remedy available to the DIP Trustee or the exercising of any power conferred by this DIP Indenture.

(j) Any action taken, or omitted to be taken, by the DIP Trustee in good faith pursuant to this DIP Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the Holder of any DIP Notes shall be conclusive and binding upon future Holders of DIP Notes and upon DIP Notes executed and delivered in exchange therefor or in place thereof.

(k) In no event shall the DIP Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the DIP Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(l) The DIP Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(m) The DIP Trustee may request that the DIP Issuers deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this DIP Indenture and the DIP Notes.

(n) The DIP Trustee shall not be deemed to have knowledge of any fact or matter unless such fact or matter is known to a Trust Officer of the DIP Trustee.

(o) The permissive rights of the DIP Trustee under this DIP Indenture shall not be construed as duties.

(p) Each of the above described rights (a) through (o) hereof shall inure to the benefit of and be enforceable by the Collateral Agent (and Paying Agent, Securities Custodian and Registrar, as applicable) hereunder.

SECTION 7.03. Individual Rights of DIP Trustee. The DIP Trustee in its individual or any other capacity may become the owner or pledgee of Additional DIP Notes and may otherwise deal with the DIP Issuers or their Affiliates with the same rights it would have if it were not DIP Trustee. Any Paying Agent or Registrar may do the same with like rights. However, the DIP Trustee must comply with Section 7.09.

SECTION 7.04. DIP Trustee's Disclaimer. The DIP Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this DIP Indenture, the DIP Guarantee or the DIP Notes, it shall not be accountable for the DIP Issuers' use of the proceeds from the DIP Notes, and it shall not be responsible for any statement of the DIP Issuers or any DIP Guarantor in this DIP Indenture or in any document issued in connection with the sale of the DIP Notes or in the DIP Notes other than the DIP Trustee's or its agent's certificate of authentication. The DIP Trustee shall not be charged with knowledge of any Default or Event of Default unless either (a) a Trust Officer shall have actual knowledge thereof or (b) the DIP Trustee shall have received written notice thereof in accordance with Section 12.01 hereof from any DIP Issuer, any DIP Guarantor or any Holder. In accepting the trust hereby created, the DIP Trustee acts solely as DIP Trustee for the Holders and not in its individual capacity and all persons, including without limitation the Holders of DIP Notes and the DIP Issuers having any claim against the DIP Trustee arising from this DIP Indenture shall look only to the funds and accounts held by the DIP Trustee hereunder for payment.

SECTION 7.05. Notice of Defaults. If a Default (other than a Default with respect to Section 4.14) occurs and is continuing and if it is actually known to a Trust Officer of the DIP Trustee, the DIP Trustee shall send to each Holder notice of the Default within the earlier of 90 days after it occurs or 30 days after written notice of it is received by the DIP Trustee, or promptly after discovery or obtaining notice if such discovery is made or notice is received 90 days after the Default occurs. Except in the case of a Default in the payment of principal of, premium (if any) or interest on any DIP Notes, the DIP Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.06. Compensation and Indemnity. The DIP Issuers, jointly and severally, shall pay to the DIP Trustee (acting in any capacity hereunder) and the Collateral Agent from time to time such compensation for its services as shall be agreed in writing between the DIP Issuers, the DIP Trustee and the Collateral Agent, including those fees and expenses set forth in that certain Agent Fee Letter, dated as of November 3, 2023, by and among the DIP Trustee, the Collateral Agent and the DIP Issuers. The DIP Trustee and the Collateral Agent's compensation shall not be limited by any law on compensation of a trustee of an express trust. The DIP Issuers, jointly and severally, shall reimburse the DIP Trustee and the Collateral Agent, as applicable, upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services, except any such disbursements, advances or expenses as may be attributable to its gross negligence, willful misconduct or bad faith as determined by a final nonappealable order of a court of competent jurisdiction. Such expenses shall include the reasonable compensation, fees and expenses, disbursements and advances of the DIP Trustee and the Collateral Agent's agents, counsel, accountants and experts. The DIP Issuers and each DIP Guarantor, jointly and severally, shall indemnify the DIP Trustee (acting in any capacity hereunder, including as Paying Agent, Securities Custodian and Registrar) and the Collateral Agent against any and all loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses) incurred by it arising out of or in connection with the acceptance or administration of this trust and the performance of its duties under this DIP Indenture, including the costs and expenses of enforcing this DIP Indenture or DIP Guarantee against the DIP Issuers or a DIP Guarantor (including this Section 7.06) and defending itself against or investigating any claim (whether asserted by any DIP Issuer, any DIP Guarantor, any Holder or any other Person) including any taxes required to be withheld or deducted from a payment to any Person entitled to payment hereunder, and

any reasonable expenses arising therefrom or with respect thereto. The obligation to pay such amounts shall survive the payment in full or defeasance of the Securities or the removal or resignation of the DIP Trustee or the Collateral Agent. The DIP Trustee and the Collateral Agent shall notify the DIP Issuers of any claim for which they may seek indemnity promptly upon obtaining actual knowledge thereof; *provided*, *however*, that any failure to so notify the DIP Issuers shall not relieve the DIP Issuers or any DIP Guarantor of its indemnity obligations hereunder. The DIP Issuers shall defend the claim and the indemnified party shall provide reasonable cooperation at the DIP Issuers' expense in the defense. Such indemnified parties may have separate counsel and the DIP Issuers and the DIP Guarantors, as applicable, shall pay the fees and expenses of such counsel; *provided*, *however*, that the DIP Issuers shall not be required to pay such fees and expenses if the DIP Issuers assume such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the DIP Issuers and the DIP Guarantors, as applicable, and such parties in connection with such defense; *provided*, *further* that the DIP Issuers shall be required to pay the reasonable fees and expenses of such counsel in evaluating such conflict. The DIP Issuers need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct, gross negligence or bad faith as determined by a final nonappealable order of court of competent jurisdiction.

To secure the DIP Issuers' and the DIP Guarantors' payment obligations in this Section, the DIP Trustee and the Collateral Agent shall have a Lien prior to the Securities on all money or property held or collected by the DIP Trustee and the Collateral Agent other than money or property held in trust to pay principal of and interest on particular DIP Notes pursuant to Article 8 hereof or otherwise.

The DIP Issuers' and the DIP Guarantors' payment and indemnification obligations pursuant to this Section shall survive the satisfaction or discharge of this DIP Indenture, any rejection or termination of this DIP Indenture or the resignation or removal of the DIP Trustee or the Collateral Agent. Without prejudice to any other rights available to the DIP Trustee or the Collateral Agent under applicable law, the expenses herein shall constitute administrative expenses pursuant to Section 503 of the Bankruptcy Code in the Chapter 11 Cases, and the DIP Issuers and DIP Guarantors agree that the payment and indemnification obligations pursuant to this Section constitute actual, necessary costs and expenses of preserving the DIP Issuers' and DIP Guarantors' estates in the Chapter 11 Cases. The provisions of this Section shall survive the termination of this Indenture.

No provision of this DIP Indenture shall require the DIP Trustee or the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if adequate indemnity against such risk or liability is not assured to its satisfaction.

SECTION 7.07. Replacement of DIP Trustee or Collateral Agent.

(a) A resignation or removal of the DIP Trustee or Collateral Agent and appointment of a successor DIP Trustee or Collateral Agent, as applicable, will become effective only upon the applicable successor DIP Trustee's or Collateral Agent's acceptance of appointment as provided in this Section 7.07.

(b) The DIP Trustee or Collateral Agent, as applicable, may resign in writing at any time and be discharged from the trust hereby created by so notifying the DIP Issuers. The Holders of a majority in aggregate principal amount of the then outstanding DIP Notes may remove the DIP Trustee or Collateral Agent, as applicable, by so notifying the DIP Trustee or Collateral Agent, as applicable, and the DIP Issuers in writing, and may appoint a successor DIP Trustee or Collateral Agent, as applicable. The DIP Issuers may remove the DIP Trustee or Collateral Agent if:

(i) the DIP Trustee or Collateral Agent, as applicable, fails to comply with Section 7.09;

(ii) the DIP Trustee or Collateral Agent, as applicable, is adjudged bankrupt or insolvent, or an order for relief is entered with respect to the DIP Trustee or Collateral Agent under any Bankruptcy Law;

(iii) a receiver or other public officer takes charge of the DIP Trustee or Collateral Agent, as applicable, or its property; or

(iv) the DIP Trustee or Collateral Agent, as applicable, otherwise becomes incapable of acting.

(c) If the DIP Trustee or Collateral Agent resigns, is removed by the DIP Issuers or by the Holders of a majority in principal amount of the DIP Notes and such Holders do not reasonably promptly appoint a successor DIP Trustee or Collateral Agent, as applicable, or if a vacancy exists in the office of Trustee or Collateral Agent, as applicable, for any reason (the DIP Trustee or Collateral Agent, as applicable, in any such event being referred to herein as the retiring trustee or retiring Collateral Agent, as applicable), the DIP Issuers shall promptly appoint a successor DIP Trustee or Collateral Agent, as applicable.

(d) A successor DIP Trustee or Collateral Agent, as applicable, shall deliver a written acceptance of its appointment to the retiring trustee or Collateral Agent, as applicable, and to the DIP Issuers. Thereupon the resignation or removal of the retiring DIP Trustee or Collateral Agent, as applicable, shall become effective, and the successor DIP Trustee or Collateral Agent, as applicable, shall have all the rights, powers and duties of the DIP Trustee or Collateral Agent, as applicable, under this DIP Indenture. The successor DIP Trustee or Collateral Agent, as applicable, shall mail a notice of its succession to the Holders. The retiring DIP Trustee or Collateral Agent, as applicable, shall promptly transfer all property held by it as DIP Trustee or Collateral Agent, as applicable, to the successor DIP Trustee or Collateral Agent, as applicable, subject to the Lien provided for in Section 7.06. The retiring DIP Trustee or Collateral Agent, as applicable, shall have no responsibility or liability for any action or inaction of a successor DIP Trustee or Collateral Agent, as applicable.

(e) If a successor DIP Trustee or Collateral Agent, as applicable, does not take office within 30 days after the retiring trustee or Collateral Agent, as applicable, resigns or is removed, the retiring DIP Trustee or Collateral Agent, as applicable, or the Holders of at least 10% in aggregate principal amount of the then outstanding DIP Note shall petition at the expense of the DIP Issuers any court of competent jurisdiction for the appointment of a successor DIP Trustee or Collateral Agent, as applicable.

(f) If the DIP Trustee or Collateral Agent, as applicable, fails to comply with Section 7.09, any Holder who has been a bona fide holder of a DIP Notes for at least six months may petition any court of competent jurisdiction for the removal of the DIP Trustee or Collateral Agent, as applicable, and the appointment of a successor DIP Trustee or Collateral Agent, as applicable.

(g) Notwithstanding the replacement of the DIP Trustee or Collateral Agent, as applicable, pursuant to this Section, the DIP Issuers' obligations under Section 7.06 shall continue for the benefit of the retiring DIP Trustee.

SECTION 7.08. Successor DIP Trustee or Collateral Agent by Merger. If the DIP Trustee or Collateral Agent consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation, limited liability company or banking

association, the resulting, surviving or transferee corporation without any further act shall be the successor DIP Trustee or Collateral Agent, as applicable.

In case at the time such successor or successors by merger, conversion or consolidation to the DIP Trustee shall succeed to the trusts created by this DIP Indenture and any of the DIP Notes shall have been authenticated but not delivered, any such successor to the DIP Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the DIP Notes shall not have been authenticated, any successor to the DIP Trustee may authenticate such DIP Notes either in the name of any predecessor hereunder or in the name of the successor to the DIP Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Securities or in this DIP Indenture *provided* that the certificate of the DIP Trustee, as applicable, shall have.

SECTION 7.09. Eligibility; Disqualification. There will at all times be a Trustee hereunder that is organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by U.S. federal or state authorities Act.

ARTICLE 8

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 8.01. Discharge of Liability on DIP Notes; Defeasance. This Indenture shall be discharged and shall cease to be of further effect as to all outstanding DIP Notes when either:

(1) (a) all DIP Notes theretofore authenticated and delivered, except lost, stolen or destroyed Securities which have been replaced or paid and DIP Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the DIP Issuers and thereafter repaid to the DIP Issuers or discharged from trust, have been delivered to the DIP Trustee for cancellation; or

(b) (i) all DIP Notes not theretofore delivered to the DIP Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise, will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the DIP Trustee, at the written direction of the Required DIP Noteholders, for the giving of notice of redemption by the DIP Trustee in the name, and at the expense, of the DIP Issuers and the DIP Issuers or any DIP Guarantor have irrevocably deposited or caused to be deposited with the DIP Trustee as trust funds in trust solely for the benefit of the Holders of the DIP Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest to pay and discharge the entire indebtedness as determined by the DIP Issuers on the DIP Notes not theretofore delivered to the DIP Trustee for cancellation for principal, premium, if any, and accrued interest to, but not including, the date of maturity or redemption; (ii) the DIP Issuers and/or the DIP Guarantors have paid or caused to be paid all sums payable by it under this DIP Indenture; and (iii) the DIP Issuers have delivered irrevocable instructions to the DIP Trustee to apply the deposited money toward the payment of the DIP Notes at maturity or the redemption date, as the case may be;

(c) In addition, the DIP Issuers must deliver an Officer's Certificate and an Opinion of Counsel to the DIP Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

(2) Subject to Section 8.02, the DIP Issuers may, at their option and at any time, elect to discharge (i) all of its obligations under the Securities and this DIP Indenture ("legal defeasance option") or (ii) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.09, 4.12, 4.14, 4.17, 4.18, 4.19 and 4.20 for the benefit of the Holders and the operation of Section 5.01 and Sections 6.01(d), 6.01(c), 6.01(f), 6.01(h) (with respect to Significant Subsidiaries of the DIP Issuers only) and 6.01(i) ("covenant defeasance option") for the benefit of the Holders. The DIP Issuers may exercise their legal defeasance option notwithstanding their prior exercise of their covenant defeasance option. In the event that the DIP Issuers terminate all of their obligations under the DIP Notes and this DIP Indenture by exercising their legal defeasance option or their covenant defeasance option, the obligations of each DIP Guarantor under its DIP Guarantee of the DIP Notes shall be terminated simultaneously with the termination of such obligations so long as no DIP Notes are then outstanding.

(3) If the DIP Issuers exercise their legal defeasance option, payment of the DIP Notes so defeased may not be accelerated because of an Event of Default. If the DIP Issuers exercise their covenant defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default specified in Section 6.01(d), 6.01(f), 6.01(h) (with respect to Significant Subsidiaries of the DIP Issuers only), 6.01(i) or 6.01(j).

(4) Upon satisfaction of the conditions set forth herein and upon request of the DIP Issuers, the DIP Trustee shall acknowledge in writing, at the direction in writing of the Required DIP Noteholders, the discharge of those obligations that the DIP Issuers terminates.

(5) Notwithstanding paragraph 2(i) above, the DIP Issuers' obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 4.15, 7.06, 7.07, 12.17 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the DIP Issuers' obligations in Sections 7.06, 8.05, 8.06 and 12.17 shall survive such satisfaction and discharge.

SECTION 8.02. Conditions to Defeasance.

(a) The DIP Issuers may exercise their legal defeasance option or their covenant defeasance option, in each case, with respect to the Securities only if:

(i) the DIP Issuers shall irrevocably deposit with the DIP Trustee, in trust, for the benefit of the Holders of the DIP Notes, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, investment bank or appraisal firm, to pay the principal of, premium, if any, and interest due on the DIP Notes on May 14, 2024 or on the redemption date, as the case may be, of such principal, premium, if any, or interest on such DIP Notes and the DIP Issuers must specify whether such DIP Notes are being defeased to maturity or to a particular redemption date;

(ii) in the case of the exercise of a legal defeasance option, the DIP Issuers shall have delivered to the DIP Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, (a) the DIP Issuers have received from, or there has been published by, the United States Internal Revenue Service a ruling, or (b) since the issuance of the DIP Notes, there has been a change in the applicable U.S. federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, subject to customary assumptions and exclusions, the Holders of the DIP Notes will not recognize income, gain or loss for U.S. federal income tax purposes, as applicable, as a result of such exercise of a legal defeasance

option and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such exercise of a legal defeasance option had not occurred;

(iii) in the case of exercise of a covenant defeasance option, the DIP Issuers shall have delivered to the DIP Trustee an Opinion of Counsel confirming that, subject to customary assumptions and exclusions, the Holders of the Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such exercise of a covenant defeasance option and will be subject to such tax on the same amounts, in the same manner and at the same times as would have been the case if such exercise of a covenant defeasance option had not occurred;

(iv) no Default (other than that resulting from borrowing funds to be applied to make such deposit and the granting of Liens in connection therewith) shall have occurred and be continuing on the date of such deposit;

(v) such exercise of a legal defeasance option or exercise of a covenant defeasance option shall not result in a breach or violation of, or constitute a default under any material agreement or instrument (other than this DIP Indenture) to which the DIP Issuers or any DIP Guarantor is a party or by which the DIP Issuers or any DIP Guarantor is bound (other than that resulting from any borrowing of funds to be applied to make the deposit required to effect such exercise of a legal defeasance option or exercise of a covenant defeasance option and any similar and simultaneous deposit relating to other Indebtedness, and, in each case, the granting of Liens in connection therewith);

(vi) the DIP Issuers shall have delivered to the DIP Trustee an Officer's Certificate stating that the deposit was not made by the DIP Issuers with the intent of defeating, hindering, delaying or defrauding any creditors of the DIP Issuers or any DIP Guarantor or others; and

(vii) the DIP Issuers shall have delivered to the DIP Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent provided for or relating to the exercise of a legal defeasance option or the exercise of a covenant defeasance option, as the case may be, have been complied with.

Notwithstanding the foregoing, an Opinion of Counsel required by the immediately preceding paragraph with respect to legal defeasance need not be delivered if all of the Securities not theretofore delivered to the DIP Trustee for cancellation (x) have become due and payable or (y) will become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the DIP Trustee for the giving of notice of redemption by the DIP Trustee in the name, and at the expense, of the DIP Issuers.

(b) Before or after a deposit, the DIP Issuers may make arrangements satisfactory to the DIP Trustee for the redemption of such Securities at a future date in accordance with Article 3.

SECTION 8.03. Application of Trust Money. The DIP Trustee shall hold in trust money or Government Securities (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from Government Securities through each Paying Agent and in accordance with this DIP Indenture to the payment of principal of, premium, if any, and interest on the DIP Notes so discharged or defeased.

SECTION 8.04. Repayment to DIP Issuers. Each of the DIP Trustee and each Paying Agent shall promptly turn over to the DIP Issuers upon written request any money or Government Securities held by it as provided in this Article 8 which, in the written opinion of a nationally recognized firm of independent public accountants delivered to the DIP Trustee (which delivery shall only be required if Government Securities have been so deposited), are in excess of the amount thereof which would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 8.

Subject to any applicable abandoned property law, the DIP Trustee and each Paying Agent shall pay to the DIP Issuers upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Holders entitled to the money must look to the DIP Issuers for payment as general creditors, and the DIP Trustee and each Paying Agent shall have no further liability with respect to such monies.

SECTION 8.05. Indemnity for Government Securities. The DIP Issuers, jointly and severally, shall pay and shall indemnify the DIP Trustee against any tax, fee or other charge imposed on or assessed against deposited Government Securities or the principal and interest received on such Government Securities.

SECTION 8.06. Reinstatement. If the DIP Trustee or the Paying Agent is unable to apply any money or Government Securities in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the DIP Issuers' obligations under this DIP Indenture and the DIP Notes so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the DIP Trustee or any Paying Agent is permitted to apply all such money or Government Securities in accordance with this Article 8; *provided, however*, that, if the DIP Issuers have made any payment of principal of or interest on, any such Securities because of the reinstatement of its obligations, the DIP Issuers shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or Government Securities held by the DIP Trustee or any Paying Agent.

ARTICLE 9

AMENDMENTS AND WAIVERS

SECTION 9.01. Without Consent of the Holders. The DIP Issuers, the DIP Guarantors (with respect to the DIP Guarantee or this DIP Indenture to which it is a party), the DIP Trustee and/or the Collateral Agent may amend or supplement this DIP Indenture, the DIP Guarantee, the DIP Notes and the DIP Documents without the consent of any Holder (subject to Section 9.05):

(i) to cure any ambiguity, omission, mistake, defect or inconsistency as provided to the DIP Trustee in an Officer's Certificate;

(ii) to provide for uncertificated DIP Notes of such series in addition to or in place of certificated Securities;

(iii) to comply with the provisions of Section 5.01 relating to mergers, consolidations and sales of assets;

(iv) to provide for the assumption of the DIP Issuers' or any DIP Guarantor's obligations to the Holders in a transaction that complies with Section 5.01;

(v) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect in any material respect the rights of any Holder under this DIP Indenture;

(vi) to add covenants for the benefit of the Holders or to surrender any right or power conferred upon the DIP Issuers or any DIP Guarantor;

(vii) to add a DIP Guarantor under this DIP Indenture or to release a DIP Guarantor in accordance with the terms of this DIP Indenture;

(viii) to make any amendment to the provisions of this DIP Indenture relating to the transfer and legending of Securities as permitted by this DIP Indenture, including, without limitation to facilitate the issuance and administration of the DIP Notes; *provided, however,* that (i) compliance with this DIP Indenture as so amended would not result in DIP Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not adversely affect the rights of Holders to transfer DIP Notes;

(ix) (A) to enter into additional or supplemental DIP Security Documents or otherwise add Collateral to further secure the DIP Notes or the DIP Guarantee or any other Obligations under this DIP Indenture or (B) to make, complete or confirm any grant of Collateral permitted or required by this DIP Indenture or any of the DIP Security Documents or any release, termination or discharge of all or any portion of the Collateral that becomes effective as set forth in this DIP Indenture or any of the DIP Security Documents;

(x) evidence and provide for the acceptance and appointment under this DIP Indenture of a successor DIP Trustee or successor Collateral Agent pursuant to the requirements thereof or to provide for the accession by the DIP Trustee or the Collateral Agent, as applicable, to this DIP Indenture or any DIP Security Document;

(xi) provide for the release of Collateral from the Lien, or the subordination of such Lien, permitted by the DIP Indenture and any DIP Security Documents; or

(xii) to supplement any schedules to any DIP Security Document to the extent permitted or required by the terms thereof or by the terms of this DIP Indenture.

After an amendment under this Section 9.01 becomes effective, the DIP Issuers shall mail or otherwise send in accordance with the procedures of the Depositary to the Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 9.02. With Consent of the Holders. Notwithstanding Section 9.01 of this DIP Indenture, the DIP Issuers, the DIP Guarantors, the DIP Trustee and the Collateral Agent may amend or supplement this DIP Indenture, the DIP Notes, the DIP Guarantee and any DIP Security Document with the written consent of the Holders of at least a majority in principal amount of the DIP Notes (including any Additional DIP Notes) then outstanding voting as a single class (including consents obtained in connection with a purchase of, tender offer or exchange offer for, the DIP Notes), and, subject to Sections 6.04 and 6.07, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the DIP Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this

DIP Indenture, the DIP Notes, any DIP Security Documents or the DIP Guarantee may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding DIP Notes voting as a single class (including consents obtained in connection with the purchase of, or tender offer or exchange offer for, DIP Notes), other than the DIP Notes beneficially owned by the DIP Issuers or its Affiliates; Section 2.09 and Section 12.04 shall determine which DIP Notes are considered to be "outstanding" for the purposes of this Section 9.02. However, without the consent of each Holder of an outstanding DIP Note affected, an amendment, supplement, waiver or other modification may not:

(i) reduce the principal amount of such DIP Notes;

(ii) reduce the principal of or change the fixed final maturity of any such DIP Notes or alter or waive the provisions with respect to the redemption of such DIP Note (other than provisions relating to Sections 4.06); *provided*, that any amendment to the notice requirements may be made with the consent of the Holders of a majority in aggregate principal amount of then outstanding DIP Notes prior to giving of any notice;

(iii) reduce the rate of or change the time for payment of interest on any DIP Notes;

(iv) waive a Default in the payment of principal of or premium, if any, or interest on the DIP Notes, except a rescission of acceleration of the DIP Notes by the Holders of at least a majority in aggregate principal amount of the DIP Notes and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this DIP Indenture or the DIP Guarantee which cannot be amended or modified without the consent of all affected Holders;

(v) make any DIP Notes payable in money other than that stated in such DIP Notes;

(vi) make any change in the provisions of this DIP Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the DIP Notes;

(vii) make any change to this Section 9.02 that is adverse to the Holders;

(viii) impair the contractual right under this DIP Indenture of any Holder to receive payment of principal of, premium, if any, and interest on such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's DIP Notes;

(ix) [Reserved];

(x) except as expressly permitted by this DIP Indenture, modify the DIP Guarantee of any Subsidiary; or

(xi) change any provision of this Section 9.02 or the definition of "Required DIP Noteholders" or any other provision specifying the number of DIP Noteholders or portion of the DIP Notes and Commitments required to take any action under the DIP Documents, without the written consent of each DIP Noteholder.

Notwithstanding the foregoing, the Required DIP Noteholders may consent, on behalf of each Holder of an outstanding DIP Note and without the consent of each Holder of an outstanding DIP Note affected, to the ratable receipt among DIP Noteholders of "take-back" debt consideration or consideration in the form of other securities in connection with a credit bid pursuant to Section 2.17 of this Agreement. Such "take-back" debt or other securities may differ from the DIP Notes in any or all of the categories described in clauses (i) through (xi) above.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the DIP Issuers shall promptly mail or otherwise send in accordance with the procedures of the Depositary to the Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

Notwithstanding anything herein to the contrary, without the consent of the Holders of at least 85.0% in principal amount of the DIP Notes then outstanding, no amendment, supplement or waiver may (i) release all or substantially all of the Collateral other than in accordance with this DIP Indenture and the DIP Security Documents, (ii) release all or substantially all of the DIP Guarantors from the DIP Guaranty or (iii) make any change to or modify the ranking of, or the priority of the Liens securing, the DIP Notes that would adversely affect the Holders.

SECTION 9.03. Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment or a waiver by a Holder of a DIP Note shall bind the Holder and every subsequent Holder of that DIP Note or portion of the DIP Note that evidences the same debt as the consenting Holder's DIP Note, even if notation of the consent or waiver is not made on the DIP Note. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's DIP Note or portion of the DIP Note if the DIP Trustee receives written notice of revocation delivered in accordance with Section 12.01 before the date on which the DIP Trustee receives an Officer's Certificate from the DIP Issuers certifying that the requisite principal amount of Securities have consented. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver becomes effective upon the (i) receipt by the DIP Issuers or the DIP Trustee of written consents by the Holders of the requisite principal amount of securities, (ii) satisfaction of conditions to effectiveness as set forth in this DIP Indenture and any indenture supplemental hereto containing such amendment or waiver and (iii) execution of such amendment or waiver (or supplemental indenture) by the DIP Issuers and the DIP Trustee.

(b) The DIP Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this DIP Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.04. Notation on or Exchange of Securities. If an amendment, supplement or waiver made pursuant to this DIP Indenture changes the terms of a Security, the DIP Issuers may require the Holder to deliver it to the DIP Trustee. The DIP Trustee may place a notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the DIP Issuers so

determine, the DIP Issuers in exchange for the Security shall issue and the DIP Trustee shall authenticate a new Security that reflects the changed terms. Failure to make a notation or to issue a new Security shall not affect the validity of such amendment, supplement or waiver.

SECTION 9.05. DIP Trustee to Sign Amendments. The DIP Trustee or the Collateral Agent, as applicable, shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the DIP Trustee or the Collateral Agent, as the case may be. If it does, the DIP Trustee or the Collateral Agent, as the case may be, may but need not sign it. In signing such amendment, the DIP Trustee or the Collateral Agent, as applicable, shall be entitled to receive indemnity satisfactory to it and shall be provided with, and (subject to Section 7.01) shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this DIP Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the DIP Issuers and the DIP Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof.

SECTION 9.06. Payment for Consent. Neither the DIP Issuers nor any Affiliate of the DIP Issuers shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this DIP Indenture or the DIP Notes unless such consideration is offered to all Holders and is paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

SECTION 9.07. Additional Voting and Consent Terms; Calculation of Principal Amount. Except as otherwise set forth herein, all DIP Notes issued under this DIP Indenture shall vote and consent separately on all matters as to which any of such DIP Notes may vote. Determinations as to whether Holders of the requisite aggregate principal amount of DIP Notes have concurred in any direction, waiver or consent shall be made in accordance with this Article 9 and Section 2.14. In this Agreement, when the Required DIP Noteholders have the right to approve or otherwise pass on the "form and substance" of a document, the DIP Noteholders and DIP Trustee may rely on an e-mail confirmation from Milbank LLP as evidence of such approval.

ARTICLE 10

GUARANTEE

SECTION 10.01. DIP Guarantee.

(a) Each DIP Guarantor hereby jointly and severally, irrevocably and unconditionally guarantees on a senior secured basis, as a primary obligor and not merely as a surety, to each Holder and the DIP Trustee (acting in any capacity hereunder, including as Collateral Agent) and their successors and assigns (i) the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of all obligations of the DIP Issuers under this DIP Indenture (including obligations and indemnification to the DIP Trustee) and the DIP Notes, whether for payment of principal of, premium, if any, or interest on the DIP and all other monetary obligations of the DIP Issuers under this DIP Indenture and the DIP Notes and (ii) the full and punctual performance within applicable grace periods of all other obligations of the DIP Issuers whether for fees, expenses, indemnification or otherwise under this DIP Indenture and the DIP Notes, on the terms set forth in this DIP Indenture by executing this DIP Indenture.

On the Initial Issue Date and any subsequent issue date, the DIP Guarantors will jointly and severally, irrevocably and unconditionally guarantee on a senior basis the DIP Notes (the "Guaranteed

Obligations") by executing the DIP Indenture. Each DIP Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from each such Guarantor, and that each such Guarantor shall remain bound under this Article 10 notwithstanding any extension or renewal of any Guaranteed Obligation.

(b) Each DIP Guarantor waives presentation to, demand of payment from and protest to the DIP Issuers of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each DIP Guarantor waives notice of any default under the DIP Notes or the Guaranteed Obligations.

(c) The obligations of each DIP Guarantor hereunder shall not be affected by (i) the failure of any Holder or the DIP Trustee to assert any claim or demand or to enforce any right or remedy against the DIP Issuers or any other Person under this DIP Indenture, the DIP Notes or any other agreement or otherwise; (ii) any extension or renewal of this DIP Indenture, the DIP Notes or any other agreement; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this DIP Indenture, the DIP Notes or any other agreement; (iv) the release of any security held by any Holder or the DIP Trustee for the Guaranteed Obligations or any DIP Guarantor; (v) the failure of any Holder or DIP Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (vi) any change in the ownership of such DIP Guarantor.

(d) The DIP Guarantor hereby waives any right to which it may be entitled to have the assets of any DIP Issuer first be used and depleted as payment of such DIP Issuers' or such DIP Guarantor's obligations hereunder prior to any amounts being claimed from or paid by such Guarantor hereunder. Each DIP Guarantor hereby waives any right to which it may be entitled to require that the DIP Issuers be sued prior to an action being initiated against such DIP Guarantor.

(e) Each DIP Guarantor further agrees that its DIP Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder or the DIP Trustee to any security held for payment of the Guaranteed Obligations.

(f) Except as expressly set forth in Sections 8.01(1)(b), 10.02 and 10.06, the obligations of each DIP Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise.

(g) Subject to Section 10.02 hereof, each DIP Guarantor agrees that its DIP Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations. Each DIP Guarantor further agrees that its DIP Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the DIP Trustee in Chapter 11 Cases or otherwise.

(h) In furtherance of the foregoing and not in limitation of any other right which any Holder or the DIP Trustee has at law or in equity against any DIP Guarantor by virtue hereof, upon the failure of the DIP Issuers to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each DIP Guarantor hereby promises to and shall, upon receipt of written demand by the DIP Trustee, forthwith pay, or cause to be paid, in cash, to the DIP Trustee an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations, (ii) accrued

and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the DIP Issuers to the DIP Trustee.

(i) Each DIP Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the DIP Trustee in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations. Each DIP Guarantor further agrees that, as between it, on the one hand, and the DIP Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of the DIP Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such DIP Guarantor for the purposes of this Section 10.01.

(j) Each DIP Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the DIP Trustee or any Holder in enforcing any rights under this Section 10.01.

Upon request of the DIP Trustee, each DIP Guarantor shall promptly execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this DIP Indenture.

SECTION 10.02. Limitation on Liability.

(a) Each DIP Guarantor, and by its acceptance of DIP Notes, each DIP Noteholder, hereby confirms that it is the intention of all such parties that the DIP Guarantee of such DIP Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any DIP Guarantee. To effectuate the foregoing intention, the DIP Trustee, the Holders and the DIP Guarantors hereby irrevocably agree that, any term or provision of this DIP Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any DIP Guarantors shall not exceed the maximum amount that can be hereby guaranteed without rendering this DIP Indenture, as it relates to such DIP Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. Each DIP Guarantor that makes a payment under its DIP Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this DIP Indenture to a contribution from each other DIP Guarantor in an amount equal to such other DIP Guarantor's *pro rata* portion of such payment based on the respective net assets of all the DIP Guarantors at the time of such payment determined in accordance with GAAP.

(b) A DIP Guarantee as to any DIP Guarantor shall be automatically and unconditionally released and discharged upon:

(i) (A) any sale, exchange, disposition or transfer (including through consolidation, merger or otherwise) of (x) the Capital Stock of such Guarantor, after which the applicable DIP Guarantor is no longer a Subsidiary, or (y) all or substantially all the assets of such DIP Guarantor, which sale, exchange, disposition or transfer in each case is made in compliance with Section 4.06(a)(i) and (ii); (B) upon the consolidation or merger of any DIP Guarantor with and into the DIP Issuers or another DIP Guarantor that is the surviving Person in such consolidation or merger, or upon the liquidation of such DIP Guarantor following the transfer of all of its assets to the DIP Issuers or another DIP Guarantor; or (C) the DIP Issuers exercising its legal defeasance option or covenant

defeasance option as described under Article 8 or the DIP Issuers' obligations under this DIP Indenture being discharged in accordance with the terms of this DIP Indenture; and

(ii) the DIP Issuers delivering to the DIP Trustee an Officer's Certificate of such DIP Guarantor or the DIP Issuers and an Opinion of Counsel, each stating that all conditions precedent provided for in this DIP Indenture relating to such transaction have been complied with.

SECTION 10.03. Successors and Assigns. This Article 10 shall be binding upon each DIP Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the DIP Trustee and the Holders and, in the event of any transfer or assignment of rights by any Holder or the DIP Trustee, the rights and privileges conferred upon that party in this DIP Indenture and in the DIP Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this DIP Indenture.

SECTION 10.04. No Waiver. Neither a failure nor a delay on the part of either the DIP Trustee or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the DIP Trustee and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.05. Modification. No modification, amendment or waiver of any provision of this Article 10, nor the consent to any departure by any DIP Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the DIP Trustee (at the written direction of the Required DIP Noteholders), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any DIP Guarantor in any case shall entitle such DIP Guarantor to any other or further notice or demand in the same, similar or other circumstances.

SECTION 10.06. Execution of Supplemental Indenture for Future DIP Guarantors. Each Subsidiary and other Person which is required to become a DIP Guarantor pursuant to Section 4.22, after the Initial Issue Date shall promptly (i) execute and deliver to the DIP Trustee a supplemental indenture in the form of Exhibit C hereto pursuant to which such Subsidiary or other Person shall become a DIP Guarantor under this Article 10 and shall guarantee the Guaranteed Obligations and (ii) execute and deliver to the Collateral Agent a Grantor Supplement pursuant to which such DIP Guarantor shall, subject to applicable legal limitations, be subject to the terms of the applicable DIP Security Documents. Concurrently with the execution and delivery of such supplemental indenture and Grantor Supplement, the DIP Issuers shall deliver to the DIP Trustee an Opinion of Counsel and an Officer's Certificate to the effect that such supplemental indenture and Grantor Supplement has been duly authorized, executed and delivered by such Subsidiary or other Person and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the DIP Guarantee of such DIP Guarantor is a valid and binding obligation of such DIP Guarantor, enforceable against such DIP Guarantor in accordance with its terms.

SECTION 10.07. Non-Impairment. The failure to endorse a DIP Guarantee on any Security shall not affect or impair the validity thereof.

SECTION 10.08. Benefits Acknowledged. Each DIP Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this DIP

Indenture and that the guarantee and waivers made by it pursuant to its DIP Guarantee are knowingly made in contemplation of such benefits.

ARTICLE 11

SECURITY

SECTION 11.01. Grant of Lien and Security Interests.

(a) Pursuant to, and otherwise subject to the terms of, the Bankruptcy Court DIP Order including the provisions set forth therein and in accordance with the terms thereof, subject to the Carve-Out, as security for the full and timely payment and performance of all of the DIP Obligations and subject to the limitations, reservations, restrictions, and qualifications contained in any DIP Collateral Document, the DIP Notes Parties hereby, pledge and grant to Collateral Agent for the benefit of the DIP Secured Parties, a security interest in and to a Lien on all of the DIP Collateral without duplication.

(b) Notwithstanding anything herein to the contrary all proceeds received by the Agents and the DIP Noteholders from the Collateral subject to the Liens granted in this Section 11.01 and in each other DIP Document and by the Bankruptcy Court DIP Order shall be subject in all respects to the Carve-Out.

SECTION 11.02. Grants, Rights and Remedies. The Liens and security interests granted pursuant to Section 11.01(a) hereof and the administrative priority and lien priority granted pursuant to the Bankruptcy Court DIP Order may be independently granted by the DIP Documents and by other DIP Documents hereafter entered into. This DIP Indenture, the Bankruptcy Court DIP Order and such other DIP Documents supplement each other, and the grants, priorities, rights and remedies of the Agents and the DIP Noteholders hereunder and thereunder are cumulative, provided that to the extent of conflict the Bankruptcy Court DIP Order controls.

SECTION 11.03. No Filings Required. The Liens and security interests referred to herein shall be deemed valid and perfected by entry of the Interim DIP Order or the Final DIP Order, as the case may be. Neither the DIP Trustee nor the Collateral Agent shall be required to file any financing statements, mortgages, notices of Lien or similar instruments in any jurisdiction or filing office, take possession or control of any Collateral, or take any other action in order to validate or perfect the Lien and security interest granted by or pursuant to this DIP Indenture, the Interim DIP Order or the Final DIP Order, as the case may be, or any other DIP Document.

SECTION 11.04. Survival. The Liens, lien priority, administrative priorities and other rights and remedies granted to the DIP Trustee, the Collateral Agent and the DIP Noteholders pursuant to this DIP Indenture, the Bankruptcy Court DIP Orders and the other DIP Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the DIP Issuers (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission, except with respect to the Carve-Out, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the DIP Trustee, the Collateral Agent and the DIP Noteholders against the

DIP Issuers in respect of any DIP Obligation except as otherwise set forth in the Bankruptcy Court DIP Order.

SECTION 11.05. The Collateral Agent.

(a) The Collateral Agent will hold (directly or through co-agents), and is directed by each Holder to so hold, and will be entitled to enforce, on behalf of the Holders, all liens on the DIP Collateral created by the DIP Security Documents for their benefit and the benefit of the other DIP Secured Parties.

(b) Except as provided in this DIP Indenture and the DIP Security Documents, the Collateral Agent will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person;

(ii) to foreclose upon or otherwise enforce any lien; or

(iii) to take any other action whatsoever with regard to any or all of the DIP Security Documents, the liens created thereby or the DIP Collateral.

SECTION 11.06. Co-Collateral Agent. At any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the DIP Collateral shall be located, or the Collateral Agent shall be advised by counsel, satisfactory to it, that it is reasonably necessary in the interest of the DIP Secured Parties, or the Required DIP Noteholders shall in writing so request the Collateral Agent, or the Collateral Agent shall deem it desirable for its own protection in the performance of its duties hereunder, the Collateral Agent and the DIP Issuers shall, at the reasonable request of the Collateral Agent, execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company, or one or more persons approved by the Collateral Agent (or the Required DIP Noteholders) and the DIP Issuers, either to act as co-Collateral Agent or co-Collateral Agents of all or any of the DIP Collateral, jointly with the Collateral Agent originally named herein or any successor or successors, or to act as separate collateral trustee or collateral trustees of any such property. In case an Event of Default shall have occurred and be continuing, the Collateral Agent may act under the foregoing provisions of this Section 11.06 without the consent of the DIP Issuers, and each Holder hereby appoints the Collateral Agent as its agent and attorney to act under the foregoing provisions of this Section 11.06 in such case.

SECTION 11.07. Limitation of Liability of the Collateral Agent. The Collateral Agent will not be liable or responsible for any loss or diminution in the value of any of the Collateral by reason of the act or omission of any agent selected by the Collateral Agent in good faith. Collateral Agent will have no additional duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent is entering into this Agreement not in its individual capacity but solely in its capacity as Collateral Agent under the DIP Indenture and in entering into this DIP Indenture and acting hereunder. The permissive authorizations, entitlements, powers and rights granted to the Collateral Agent herein shall not be construed as duties. Any exercise of discretion on behalf of the Collateral Agent shall be exercised in accordance with the terms of this DIP Indenture. Notwithstanding anything herein to the contrary, the Collateral Agent shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the perfection or maintenance of any security interest created hereunder. None of the provisions in this DIP Indenture shall require the Collateral Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties, or in the

exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it. The Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Collateral Agent is required to exercise as directed in writing by the written instruction from the Holders of a majority in principal amount of the outstanding DIP Notes; provided, the Collateral Agent shall be entitled to refrain from any act or the taking of any action hereunder or the DIP Indenture or from the exercise of any power or authority vested in it hereunder or thereunder unless and until the Collateral Agent shall have received instructions from the Holders of a majority in principal amount of the outstanding DIP Notes, and if the Collateral Agent deems necessary, satisfactory indemnity, and shall not be liable for any such delay in acting. The Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to this Indenture or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any bankruptcy or insolvency law. Notwithstanding the foregoing, the Collateral Agent shall be liable for any claims, damages and demands arising out of its own gross negligence or willful misconduct as determined by a nonappealable order of a court of competent jurisdiction. For purposes of clarity, phrases such as "satisfactory to the Collateral Agent", "approved by the Collateral Agent", "acceptable to the Collateral Agent", "as determined by the Collateral Agent", "in the Collateral Agent's discretion", "selected by the Collateral Agent", "requested by the Collateral Agent" and phrases of similar import authorize and permit the Collateral Agent to approve, disapprove, determine, act or decline to act in its discretion.

ARTICLE 12

MISCELLANEOUS

SECTION 12.01. Notices.

(a) Any notice or communication by any DIP Issuer, any DIP Guarantor or the DIP Trustee to the others is duly given if in writing and delivered in person, via facsimile, electronic mail or other electronic transmission, mailed by first-class mail (registered or certified, return receipt requested) or overnight air courier guaranteeing next day delivery, to the addressed as follows:

if to the DIP Issuers or a DIP Guarantor:

Anagram International, Inc.
7700 Anagram Drive
Minneapolis, MN 55344
Attention: Christopher Wiles
Email: wilesc@anagramintl.com

With a copy to:

Simpson Thacher & Bartlett, LLP
425 Lexington Avenue
New York, New York 10017
Attention: Sunny Singh
Nicholas Baker
Email: sunny.singh@stblaw.com

nbaker@stblaw.com

if to the DIP Trustee:

GLAS Trust Company LLC
3 Second Street
Suite 206
Jersey City, NJ 07311
Attention: TMG
Email: TMGUS@glas.agency
Facsimile: 212-202-6246

With a copy to:

King & Spalding LLP
110 North Wacker Drive
Suite 3800
Chicago, IL 60606
Attention: Geoffrey M. King
Kevin E. Manz
Email: gking@kslaw.com
kmanz@kslaw.com

Any DIP Issuer, any DIP Guarantor or the DIP Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders, DIP Trustee and Collateral Agent) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five calendar days after being deposited in the mail, first-class, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery. All notices given by publication or electronic delivery will be deemed given on the first date on which publication or electronic delivery is made. Any notice or communication delivered to the DIP Trustee or the Collateral Agent shall be deemed effective upon actual receipt thereof.

(b) Any notice or communication mailed to a Holder shall be mailed, first class mail (certified or registered, return receipt requested), by overnight air courier guaranteeing next day delivery or sent electronically to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed or sent within the time prescribed.

(c) Failure to deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or otherwise delivered in the manner provided above, it is duly given, whether or not the addressee receives it.

(d) Notwithstanding any other provision of this DIP Indenture or any DIP Notes, where this DIP Indenture or any DIP Note provides for notice of any event (including any notice of redemption) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Security (or its designee) pursuant to the standing

instructions from the Depositary (or its designee), including by electronic mail in accordance with accepted practices at the Depositary.

SECTION 12.02. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the DIP Issuers to the DIP Trustee to take or refrain from taking any action under this DIP Indenture, the DIP Issuers shall furnish to the DIP Trustee:

(a) an Officer's Certificate in form reasonably satisfactory to the DIP Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this DIP Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form reasonably satisfactory to the DIP Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.03. Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this DIP Indenture (other than pursuant to Section 4.09 hereof) shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an officer's certificate as to matters of fact); and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with; *provided*, *however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 12.04. When Securities Disregarded. In determining whether the Holders of the required principal amount of DIP Notes have concurred in any direction, waiver or consent, DIP Notes owned by any DIP Issuer, any DIP Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the DIP Issuers or any DIP Guarantor shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the DIP Trustee shall be protected in relying on any such direction, waiver or consent, only DIP Notes which a Trust Officer of the DIP Trustee actually knows are so owned shall be so disregarded. DIP Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the DIP Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the DIP Notes and that the pledgee is not any DIP Issuer, any DIP Guarantor, or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the DIP Issuers or any DIP Guarantor. Subject to the foregoing, only DIP Notes outstanding at the time shall be considered in any such determination.

SECTION 12.05. Rules by DIP Trustee, Paying Agent and Registrar. The DIP Trustee may make reasonable rules for action by or a meeting of the Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

SECTION 12.06. Legal Holidays. If a payment date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such payment date if it were a Business Day for the intervening period. If a regular record date is not a Business Day, the record date shall not be affected.

SECTION 12.07. GOVERNING LAW; WAIVER OF JURY TRIAL.

(a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY CODE, THIS DIP INDENTURE, THE DIP NOTES AND THE DIP GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

(b) **SUBJECT TO CLAUSE (v) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER DIP DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN THE BANKRUPTCY COURT, OR IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH DIP NOTES PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (i) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS (OTHER THAN WITH RESPECT TO ACTIONS BY ANY AGENT IN RESPECT OF RIGHTS UNDER ANY COLLATERAL DOCUMENTS GOVERNED BY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK OR WITH RESPECT TO ANY COLLATERAL SUBJECT THERETO); (ii) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE DIP NOTES PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 12.01; (iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE DIP NOTES PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT AND (v) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY DIP NOTES PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.**

(c) THE DIP NOTES PARTIES, THE DIP TRUSTEE EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND EACH DIP NOTEHOLDER BY PURCHASING DIP NOTES SHALL BE DEEMED TO IRREVOCABLY AND UNCONDIITONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS DIP INDENTURE OR ANY OTHER DIP DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 12.07. EACH SUCH PARTY HERETO HEREBY IRREVOCABLY WAIVES, OR IS DEEMED TO IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

SECTION 12.08. No Recourse Against Others. No past, present or future director, officer, employee, manager, incorporator, member, partner or stockholder of the DIP Issuers or any DIP Guarantor or any of their Subsidiaries shall have any liability for any obligations of the DIP Issuers or the DIP Guarantor under the Securities, the DIP Guarantee or this DIP Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder of DIP Notes by accepting a DIP Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the DIP Notes.

SECTION 12.09. Successors. All agreements of the DIP Issuers and each DIP Guarantor in this DIP Indenture and the DIP Notes shall bind its successors. All agreements of the DIP Trustee in this DIP Indenture shall bind its successors.

SECTION 12.10. Multiple Originals. The parties may sign any number of copies of this DIP Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this DIP Indenture. The exchange of copies of this DIP Indenture and of signature pages by facsimile or email (in PDF format or otherwise) transmission shall constitute effective execution and delivery of this DIP Indenture as to the parties hereto and may be used in lieu of the original DIP Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or email (in PDF format or otherwise) shall be deemed to be their original signatures for all purposes.

SECTION 12.11. Table of Contents; Headings. The table of contents and headings of the Articles and Sections of this DIP Indenture have been inserted for convenience of reference only, are not intended to be considered a part of this DIP Indenture and shall not modify or restrict any of the terms or provisions of this DIP Indenture.

SECTION 12.12. Conflicts. To the extent of any conflict between this Indenture and the Bankruptcy Court DIP Order, the Bankruptcy Court DIP Order shall prevail.

SECTION 12.13. Severability. In case any provision in this DIP Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 12.14. Force Majeure. In no event shall the DIP Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the DIP Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 12.15. U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the DIP Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the DIP Trustee. The parties to this DIP Indenture agree that they will provide the DIP Trustee with such information as it may request in order for the DIP Trustee to satisfy the requirements of the U.S.A. Patriot Act.

SECTION 12.16. No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret any other indenture, loan or debt agreement of the DIP Issuers or their Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this DIP Indenture.

SECTION 12.17. Costs and Expenses. The DIP Notes Parties, jointly and severally, agree to pay or reimburse in cash the Ad Hoc Group for all reasonable and documented out-of-pocket costs and expenses of the Ad Hoc Group (promptly following a written demand therefor) incurred in connection with the preparation, negotiation, execution, delivery, administration and enforcement of this Indenture and the other DIP Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof, and the consummation and administration of the transactions contemplated hereby and thereby, including all reasonable and documented fees and expenses of Milbank LLP, Houlihan Lokey Capital, Inc. and Norton Rose Fulbright US LLP. The agreements in this Section 12.17 shall survive the termination, rejection, satisfaction or discharge of this this Indenture and repayment of the DIP Notes. All amounts due under this Section 12.17 shall be paid promptly following receipt by the DIP Notes Parties of a reasonably detailed invoice relating thereto.

[*Signature Pages Follow*]

IN WITNESS WHEREOF, the parties have caused this DIP Indenture to be duly executed as of the date first written above.

Very truly yours,

ANAGRAM HOLDINGS, LLC

By: /s/Christopher Wiles
Name: Christopher P. Wiles
Title: Vice President Finance

ANAGRAM INTERNATIONAL, INC.
By: /s/Christopher Wiles
Name: Christopher P. Wiles
Title: Vice President Finance

ANAGRAM INTERNATIONAL HOLDINGS, INC., as DIP Guarantor

By: /s/Christopher Wiles
Name: Christopher P. Wiles
Title: Vice President Finance

GLAS TRUST COMPANY LLC, as DIP Trustee and Collateral Agent

By: /s/Geoffrey Lewis
Name: Geoffrey Lewis
Title: Vice President

APPENDIX A

Transfer Restrictions

1. Definitions.

1.1 Definitions.

For the purposes of this Appendix A the following terms shall have the meanings indicated below:

"4(a)(2) Securities" means all Securities offered and sold to IAIs in reliance on Section 4(a)(2) of the Securities Act.

"Definitive Security" means a certificated Security (bearing the Restricted Securities Legend if the transfer of such Security is restricted by applicable law) that does not include the Global Securities Legend.

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Global Securities Legend" means the legend set forth under that caption in Exhibit A to the Indenture.

"IAI" means an institutional "accredited investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Regulation S" means Regulation S under the Securities Act.

"Regulation S Securities" means all Securities offered and sold outside the United States in reliance on Regulation S.

"Restricted Global Securities" means Global Securities and any other Securities that are required to bear, or are subject to, the Restricted Securities Legend.

"Restricted Period," with respect to any Securities, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Securities are first offered to persons other than distributors (as defined in Regulation S under the Securities Act) in reliance on Regulation S, notice of which day shall be promptly given in writing by the DIP Issuers to the DIP Trustee and (b) the Initial Issue Date.

"Restricted Securities Legend" means the legend set forth in Section 2.2(f)(i) herein.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 144A Securities" means all Securities offered and sold to QIBs in reliance on Rule 144A.

"Rule 501" means Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Securities Custodian" means the custodian with respect to a Global Security (as appointed by the Depository) or any successor person thereto, who shall initially be the DIP Trustee.

"Transfer Restricted Securities" means Definitive Securities and any other Securities that bear or are required to bear or are subject to the Restricted Securities Legend.

"Unrestricted Definitive Securities" means Definitive Securities and any other Securities that are not required to bear, or are not subject to, the Restricted Securities Legend.

"Unrestricted Global Securities" means Global Securities and any other Securities that are not required to bear, or are not subject to, the Restricted Securities Legend.

1.2 Other Definitions.

Term:	Defined in Section:
4(a)(2) Securities	2.1(a)
Agent Members	2.1(a)
Clearstream	2.1(a)
Euroclear	2.1(a)
Global Securities	2.1(a)
Regulation S Global Securities	2.1(a)
Regulation S Permanent Global Security	2.1(a)
Regulation S Temporary Global Security	2.1(a)
Rule 144A Global Securities	2.1(a)

2. The Securities.

2.1 Form and Dating; Global Securities.

(a) Global Securities. 4(a)(2) Securities initially shall be represented by one or more Securities in definitive, fully registered, global form without interest coupons (collectively, the "4(a)(2) Global Securities").

Rule 144A Securities initially shall be represented by one or more Securities in definitive, fully registered, global form without interest coupons (collectively, the "Rule 144A Global Securities").

Regulation S Securities initially shall be represented by one or more Securities in fully registered, global form without interest coupons (collectively, the "Regulation S Temporary Global Security" and, together with the Regulation S Permanent Global Security (defined below), the "Regulation S Global Securities"), which shall be registered in the name of the Depository or the nominee of the Depository for the accounts of designated agents holding on behalf of Euroclear Bank S.A./N.V., as operator of the Euroclear system ("Euroclear") or Clearstream Banking, Société Anonyme ("Clearstream").

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Security shall be exchanged for beneficial interests in a permanent Global Security (the "Regulation S Permanent Global Security") pursuant to the applicable procedures of the Depository. Simultaneously with the authentication of the Regulation S Permanent Global Security, the DIP Trustee shall cancel the Regulation S Temporary Global Security. The aggregate principal amount of the Regulation S Temporary Global Security and the Regulation S Permanent Global Security may from time to time be increased or decreased by adjustments made on the records of the DIP Trustee and the Depository or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream shall be applicable to transfers of beneficial interests in the Regulation S Temporary Global Security and the Regulation S Permanent Global Security that are held by participants through Euroclear or Clearstream.

The term "Global Securities" means the 4(a)(2) Global Securities, Rule 144A Global Securities and the Regulation S Global Securities. The Global Securities shall bear the Global Security Legend. The Global Securities initially shall (i) be registered in the name of the Depository or the nominee of such Depository, in each case for credit to an account of a member of, or participant in, such Depository (an "Agent Member"), (ii) be delivered to the DIP Trustee as custodian for such Depository and (iii) bear the Restricted Securities Legend.

Members of, or direct or indirect participants in, the Depository shall have no rights under the Indenture with respect to any Global Security held on their behalf by the Depository, or the DIP Trustee as its custodian, or under the Global Securities. The Depository may be treated by the DIP Issuers, the DIP Trustee and any agent of the DIP Issuers or the DIP Trustee as the absolute owner of the Global Securities for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the DIP Issuers, the DIP Trustee or any agent of the DIP Issuers or the DIP Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository, or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security. Neither the DIP Issuers or the DIP Trustee will assume any responsibility for the actions or inactions of any Depositary.

(i) Transfers of Global Securities shall be limited to transfer in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Securities may be transferred or exchanged for Definitive Securities only in accordance with the applicable rules and procedures of the Depository and the provisions of Section 2.2. In addition, a Global Security shall be exchangeable for Definitive Securities if (A) the Depository (x) notifies the DIP Issuers that it is unwilling or unable to continue as depository for such Global Security and the DIP Issuers thereupon fails to appoint a successor depository within 90 days or (y) has ceased to be a clearing agency registered under the Exchange Act, (B) the DIP Issuers, at its option, notifies the DIP Trustee that it elects to cause the issuance of Definitive Securities or (C) there shall have occurred and be continuing an Event of Default with respect to such Global Security and the Depositary shall have requested such exchange; *provided* that in no event shall the Regulation S Temporary Global Security be exchanged by the DIP Issuers for Definitive Securities prior to (1) the expiration of the Restricted Period and (2) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act. In all cases, Definitive Securities delivered in exchange for any Global Security or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository in accordance with its customary procedures.

(ii) In connection with the transfer of a Global Security as an entirety to beneficial owners pursuant to subsection (i) of this Section 2.1(a), such Global Security shall be deemed to be surrendered to the DIP Trustee for cancellation, and the DIP Issuers shall execute, and the DIP Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations.

(iii) Any Transfer Restricted Security delivered in exchange for an interest in a Global Security pursuant to Section 2.2 shall, except as otherwise provided in Section 2.2, bear the Restricted Securities Legend.

(iv) Notwithstanding the foregoing, through the Restricted Period, a beneficial interest in such Regulation S Global Security may be held only through Euroclear or Clearstream unless delivery is made in accordance with the applicable provisions of Section 2.2.

(v) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under the Indenture or the Securities.

2.2 Transfer and Exchange.

(a) Transfer and Exchange of Global Securities. A Global Security may not be transferred as a whole except as set forth in Section 2.1(a). Global Securities will not be exchanged by the DIP Issuers for Definitive Securities except under the circumstances described in Section 2.1(a)(ii). Global Securities also may be exchanged or replaced, in whole or in part, as provided in Sections 2.08 and 2.10 of the Indenture. Beneficial interests in a Global Security may be transferred and exchanged as provided in Section 2.2(b) or 2.2(h).

(b) Transfer and Exchange of Beneficial Interests in Global Securities. The transfer and exchange of beneficial interests in the Global Securities shall be effected through the Depository, in accordance with the provisions of the Indenture and the applicable rules and procedures of the Depository. Beneficial interests in Restricted Global Securities shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Beneficial interests in Global Securities shall be transferred or exchanged only for beneficial interests in Global Securities. Transfers and exchanges of beneficial interests in the Global Securities also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Security. Beneficial interests in any Restricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Security in accordance with the transfer restrictions set forth in the Restricted Securities Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in a Regulation S Global Security may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an initial purchaser). A beneficial interest in an Unrestricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.2(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Securities. In connection with all transfers and exchanges of beneficial interests in any Global Security that is not subject to Section 2.2(b)(i), the transferor of such beneficial interest must deliver to the Registrar (1) a written order from an Agent Member given to the Depository in accordance with the applicable rules and procedures of the Depository directing the Depository to credit or cause to be credited a beneficial interest in another Global Security in an amount equal to the beneficial interest to be transferred or exchanged

and (2) instructions given in accordance with the applicable rules and procedures of the Depository containing information regarding the Agent Member account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Securities contained in the Indenture and the Securities or otherwise applicable under the Securities Act, the DIP Trustee shall adjust the principal amount of the relevant Global Security pursuant to Section 2.2(h).

(iii) Transfer of Beneficial Interests to Another Restricted Global Security. A beneficial interest in a Restricted Global Security may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Security if the transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a Rule 144A Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security; and

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security.

(iv) Transfer and Exchange of Beneficial Interests in a Restricted Global Security for Beneficial Interests in an Unrestricted Global Security. A beneficial interest in a Restricted Global Security may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Security or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security if the exchange or transfer complies with the requirements of Section 2.2(b)(ii) above and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Restricted Global Security proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security; or

(B) if the holder of such beneficial interest in a Restricted Global Security proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security, and, in each such case, if the DIP Issuers so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the DIP Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act. If any such transfer or exchange is effected pursuant to this subparagraph (iv) at a time when an Unrestricted Global Security has not yet been issued, the DIP Issuers shall issue and, upon receipt of an written order of the DIP Issuers in the form of an Officer's Certificate in accordance with Section 2.01 of the Indenture, the DIP Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to this subparagraph (iv).

(v) Transfer and Exchange of Beneficial Interests in an Unrestricted Global Security for Beneficial Interests in a Restricted Global Security. Beneficial interests in an Unrestricted Global Security cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Security.

(c) Transfer and Exchange of Beneficial Interests in Global Securities for Definitive Securities. A beneficial interest in a Global Security may not be exchanged for a Definitive Security except under the circumstances described in Section 2.1(a)(ii). A beneficial interest in a Global Security may not be transferred to a Person who takes delivery thereof in the form of a Definitive Security except under the circumstances described in Section 2.1(a)(ii). In any case, beneficial interests in Global Securities shall be transferred or exchanged only for Definitive Securities.

(d) Transfer and Exchange of Definitive Securities for Beneficial Interests in Global Securities. Transfers and exchanges of beneficial interests in the Global Securities also shall require compliance with either subparagraph (i), (ii), (iii) or (iv) below, as applicable:

(i) Transfer Restricted Securities to Beneficial Interests in Restricted Global Securities. If any Holder of a Transfer Restricted Security proposes to exchange such Transfer Restricted Security for a beneficial interest in a Restricted Global Security or to transfer such Transfer Restricted Security to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Security, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Transfer Restricted Security proposes to exchange such Transfer Restricted Security for a beneficial interest in a Restricted Global Security, a certificate from such Holder in the form attached to the applicable Security;

(B) if such Transfer Restricted Security is being transferred to a QIB in accordance with Rule 144A under the Securities Act, a certificate from such Holder in the form attached to the applicable Security;

(C) if such Transfer Restricted Security is being transferred to a non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security;

(D) if such Transfer Restricted Security is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security;

(E) if such Transfer Restricted Security is being transferred to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate from such Holder in the form attached to the applicable Security, including the certifications, certificates and Opinion of Counsel, if applicable; or

(F) if such Transfer Restricted Security is being transferred to the DIP Issuers or a Subsidiary thereof, a certificate from such Holder in the form attached to the applicable Security; the DIP Trustee shall cancel the Transfer Restricted

Security, and increase or cause to be increased the aggregate principal amount of the appropriate Restricted Global Security.

(ii) Transfer Restricted Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of a Transfer Restricted Security may exchange such Transfer Restricted Security for a beneficial interest in an Unrestricted Global Security or transfer such Transfer Restricted Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security only if the Registrar receives the following:

(A) if the Holder of such Transfer Restricted Security proposes to exchange such Transfer Restricted Security for a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security; or

(B) if the Holder of such Transfer Restricted Securities proposes to transfer such Transfer Restricted Security to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security, and, in each such case, if the DIP Issuers so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the DIP Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of this subparagraph (ii), the DIP Trustee shall cancel the Transfer Restricted Securities and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security. If any such transfer or exchange is effected pursuant to this subparagraph (ii) at a time when an Unrestricted Global Security has not yet been issued, the DIP Issuers shall issue and, upon receipt of a written order of the DIP Issuers in the form of an Officer's Certificate, the DIP Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Transfer Restricted Securities transferred or exchanged pursuant to this subparagraph (ii).

(iii) Unrestricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of an Unrestricted Definitive Security may exchange such Unrestricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security at any time. Upon receipt of a request for such an exchange or transfer, the DIP Trustee shall cancel the applicable Unrestricted Definitive Security and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Securities. If any such transfer or exchange is effected pursuant to this subparagraph (iii) at a time when an Unrestricted Global Security has not yet been issued, the DIP Issuers shall issue and, upon receipt of an written order of the DIP Issuers in the form of an Officer's Certificate, the DIP Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Unrestricted Definitive Securities transferred or exchanged pursuant to this subparagraph (iii).

(iv) Unrestricted Definitive Securities to Beneficial Interests in Restricted Global Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Restricted Global Security.

(e) Transfer and Exchange of Definitive Securities for Definitive Securities. Upon request by a Holder of Definitive Securities and such Holder's compliance with the provisions of this Section 2.2(e), the Registrar shall register the transfer or exchange of Definitive Securities. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Securities duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.2(e).

(i) Transfer Restricted Securities to Transfer Restricted Securities. A Transfer Restricted Security may be transferred to and registered in the name of a Person who takes delivery thereof in the form of a Transfer Restricted Security if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Security;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 under the Securities Act, then the transferor must deliver a certificate in the form attached to the applicable Security;

(C) if the transfer will be made pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144 under the Securities Act, a certificate in the form attached to the applicable Security;

(D) if the transfer will be made to an IAI in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (A) through (C) above, a certificate in the form attached to the applicable Security; and

(E) if such transfer will be made to the DIP Issuers or a Subsidiary thereof, a certificate in the form attached to the applicable Security.

(ii) Transfer Restricted Securities to Unrestricted Definitive Securities. Any Transfer Restricted Security may be exchanged by the Holder thereof for an Unrestricted Definitive Security or transferred to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security only if the Registrar receives the following:

(i) if the Holder of such Transfer Restricted Security proposes to exchange such Transfer Restricted Security for an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security; or

(ii) if the Holder of such Transfer Restricted Security proposes to transfer such Securities to a Person who shall take delivery thereof in the form of

an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security, and, in each such case, if the DIP Issuers so requests, an Opinion of Counsel in form reasonably acceptable to the DIP Issuers to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Securities to Unrestricted Definitive Securities. A Holder of an Unrestricted Definitive Security may transfer such Unrestricted Definitive Securities to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security at any time. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Securities pursuant to the instructions from the Holder thereof.

(iv) Unrestricted Definitive Securities to Transfer Restricted Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a Transfer Restricted Security.

At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the DIP Trustee in accordance with Section 2.11 of the Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the DIP Trustee or by the Depository at the direction of the DIP Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the DIP Trustee or by the Depository at the direction of the DIP Trustee to reflect such increase.

(f) Legend.

(i) Except as permitted by the following paragraph (ii), each Security certificate evidencing the Global Securities and the Definitive Securities (and all Securities issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

"THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE DIP ISSUERS THAT (A)

SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) INSIDE THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (b) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (c) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF APPLICABLE) OR (d) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO THE DIP ISSUERS IF THE DIP ISSUERS SO REQUESTS), (2) TO THE DIP ISSUERS OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN CLAUSE (A) ABOVE. NO REPRESENTATION CAN BE MADE AS TO THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 FOR RESALE OF THE SECURITY EVIDENCED HEREBY."

Each Regulation S Temporary Global Security shall bear the following additional legend:

"THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION ORIGINALLY EXEMPT FROM REGISTRATION UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE TRANSFERRED IN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY U.S. PERSON EXCEPT PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND ALL APPLICABLE STATE SECURITIES LAWS. TERMS USED ABOVE HAVE THE MEANINGS GIVEN TO THEM IN REGULATION S UNDER THE SECURITIES ACT."

Each Definitive Security shall bear the following additional legend:

"IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS."

(ii) Upon any sale or transfer of a Transfer Restricted Security that is a Definitive Security, the Registrar shall permit the Holder thereof to exchange such Transfer Restricted Security for a Definitive Security that does not bear the legends set forth above and rescind any restriction on the transfer of such Transfer Restricted Security if the Holder certifies in writing to the Registrar that its request for such exchange was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Security).

(iii) Upon a sale or transfer after the expiration of the Restricted Period of any Security acquired pursuant to Regulation S, all requirements that such Security bear the Restricted Securities Legend shall cease to apply and the requirements requiring any such Security be issued in global form shall continue to apply.

Each Security certificate evidencing a Global Security or a Definitive Security (and all Securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (the "OID Legend"):

> "THIS SECURITY HAS BEEN ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR U.S. FEDERAL INCOME TAX PURPOSES. A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY FOR THIS SECURITY BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE COMPANY AT THE FOLLOWING ADDRESS: ANAGRAM INTERNATIONAL, INC. 7700 ANAGRAM DRIVE, MINNEAPOLIS, MN 55344, ATTN: CHRISTOPHER WILES, WILESC@ANAGRAMINTL.COM."

(g) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the DIP Trustee in accordance with Section 2.11 of the Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the DIP Trustee or by the Depository at the direction of the DIP Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the DIP Trustee or by the Depository at the direction of the DIP Trustee to reflect such increase.

(h) Obligations with Respect to Transfers and Exchanges of Securities.

(i) To permit registrations of transfers and exchanges, the DIP Issuers shall execute and the DIP Trustee shall authenticate, Definitive Securities and Global Securities at the Registrar's request.

(ii) No service charge shall be made for any registration of transfer or exchange, but the DIP Issuers may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or similar governmental charge payable upon exchanges pursuant to Sections 3.06, 4.06 and 9.04 of the Indenture).

(iii) Prior to the due presentation for registration of transfer of any Security, the DIP Issuers, the DIP Trustee, the Paying Agent or the Registrar may deem and treat the person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the DIP Issuers, the DIP Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Securities issued upon any transfer or exchange pursuant to the terms of the Indenture shall evidence the same debt and shall be entitled to the same benefits under the Indenture as the Securities surrendered upon such transfer or exchange.

(i) No Obligation of the DIP Trustee.

(i) The DIP Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or any other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to the Holders under the Securities shall be given or made only to the registered Holders (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The DIP Trustee may conclusively rely and shall be fully protected in so relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(ii) The DIP Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under the Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of the Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. Neither the DIP Trustee nor any agent or Registrar shall have any responsibility for any actions taken or not taken by any Depository.

Exhibit 3

Priorities of Liens

ABL Priority Collateral	Notes Priority Collateral	Unencumbered Property
1. Carve-Out	1. Carve-Out	1. Carve-Out
2. DIP ABL Liens	2. DIP Notes Liens	2. DIP Notes Liens
3. ABL Adequate Protection Liens	3. 1L Adequate Protection Liens	3. DIP ABL Liens
4. Prepetition ABL Liens	4. Prepetition 1L Notes Liens	4. ABL Adequate Protection Liens / 1L Adequate Protection Liens
5. DIP Notes Liens	5. 2L Adequate Protection Liens	5. 2L Adequate Protection Liens
6. 1L Adequate Protection Liens	6. Prepetition 2L Notes Liens	
7. Prepetition 1L Notes Liens	7. DIP ABL Liens	
8. 2L Adequate Protection Liens	8. ABL Adequate Protection Liens	
9. Prepetition 2L Notes Liens	9. Prepetition ABL Liens	

Priorities of Administrative Expense Claims

1. Carve-Out
2. DIP Superpriority Claims[8]
3. ABL 507(b) Claim / 1L 507(b) Claim
4. 2L 507(b) Claim

[8] The DIP Superpriority Claims granted to (x) the DIP ABL Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, ABL Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP Notes Secured Parties, (y) the DIP Notes Secured Parties shall, at all times be in respect of any assets or property that constitute, or, but for the commencement of these chapter 11 cases, would have constituted, Notes Priority Collateral, senior to the DIP Superpriority Claims granted to the DIP ABL Secured Parties and (z) the DIP ABL Secured Parties and the DIP Notes Secured Parties shall be *pari passu* in right of payment as to the proceeds of any assets not described in the foregoing clause (x) or (y) other than the DIP Notes Account and the amounts on deposit therein which shall only be for the benefit of the DIP Notes Secured Parties.

Exhibit 4

DIP ABL Termination Events[9]

Each of the following events shall constitute a DIP ABL Termination Event:

1. The occurrence and continuance of an Event of Default (as defined in the DIP Notes Indenture) that has not been waived or cured as provided by the DIP Notes Indenture within five (5) Business Days after its first occurrence;

2. The Debtors fail to make any payment to the Prepetition ABL Secured Parties or the DIP ABL Secured Parties when due pursuant to or in accordance with the DIP Orders and such failure shall continue for two (2) Business Days.

3. Except as expressly granted by the DIP Orders, the creation of, or the filing by the Debtors of any motion to create, any liens on DIP Collateral that are pari passu with or senior to the liens securing the DIP ABL Obligations or the Prepetition ABL Obligations;

4. The Debtors file a motion seeking use of Cash Collateral other than as set forth in the DIP Orders or with the prior written consent of the DIP ABL Agent;

5. Without the prior written consent of the DIP ABL Agent, the Debtors file a motion seeking to sell all or substantially all of their assets, or any portion of the ABL Priority Collateral, that does not include a stalking horse bid that provides for the indefeasible payment in full in cash (or, with respect to any Bank Product Obligations, cash collateralization thereof in accordance with the terms of the DIP ABL Agreement) of all of the DIP ABL Obligations at the closing thereof;

6. An order reasonably acceptable to DIP ABL Agent is not entered, on or before December 10, 2023, approving the bidding procedure, stalking horse protections and related procedures sought pursuant to the *Emergency Motion of Debtors for Entry of an Order (I)(A) Approving the Bidding Procedures for Sale of Debtors' Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates With Respect Thereto, (D) Approving Form and Manner of Notices Thereof and (E) Approving Contract Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases and (III) Granting Related Relief* [Docket No. 26], it being understood that the relief and related order in connection with the foregoing motion is reasonably satisfactory to the DIP ABL Agent;

7. Without the prior written consent of the DIP ABL Agent, the closing of a sale or all or substantially all of the ABL Priority Collateral that does not provide for the indefeasible payment in full in cash (or, with respect to any Bank Product Obligations, cash

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[9] Capitalized terms used in this **Exhibit 4** that are not otherwise defined herein shall have the meanings given to them in the Prepetition ABL Credit Agreement.

collateralization thereof in accordance with the terms of the DIP ABL Agreement) of all of the DIP ABL Obligations at the closing thereof;

8. The Debtors amend or otherwise modify the bid procedures or the stalking horse purchase agreement approved by the bidding procedures order referenced in subsection 6 (the "Bidding Procedures Order") to permit bids that do not include all or substantially all ABL Priority Collateral or do not provide by their terms that all DIP ABL Obligations will be paid in full in cash in accordance with the DIP ABL Agreement from the closing thereof (unless the DIP ABL Agent has agreed otherwise in writing);

9. The stalking horse purchase agreement attached to the Bidding Procedures Order as Exhibit 2 thereto is terminated for any reason other than the consummation of a higher and better bid in accordance with the Bidding Procedures Order.

10. The filing of any motion, plan, disclosure statement or any other pleading or document by the Debtors, or the Debtors support or do not object to a motion, plan, disclosure statement or any other pleading or documents, or the confirmation of any plan, that provides for treatment of the DIP ABL Obligations under a plan of reorganization in any manner other than payment in full in cash (or with respect to any letters of credit, cash collateralization thereof in accordance with their terms) on or before the effective date thereof;

11. After giving effect to applications of Cash Collateral (and all loan advances) during any applicable Cash Dominion Period, the Debtors fail to pay any amounts due and owing to the DIP ABL Secured Parties, the Prepetition ABL Secured Parties or their respective advisors retained under and as permitted by the DIP ABL Agreement, the DIP Orders, as applicable, and such failure continues for five (5) Business Days;

12. The Debtors' exclusivity period under Bankruptcy Code § 1121 is terminated or shortened;

13. The Debtors' chapter 11 cases are converted, or the Debtors file or fail to timely contest a motion to convert these chapter 11 cases, to cases under chapter 7 of the Bankruptcy Code;

14. The dismissal of, or the Debtors file or fail to timely contest a motion to dismiss, these chapter 11 cases;

15. Parties in interest (other than the DIP ABL Agent or the other DIP ABL Secured Parties) receive relief from the automatic stay to exercise any remedies against the ABL Priority Collateral having a fair value in excess of $250,000 in the aggregate;

16. A breach of the terms of the DIP Orders, as applicable, by the Debtors in a manner materially adverse to the DIP ABL Secured Parties or the Prepetition ABL Secured Parties that has not been cured within five (5) Business Days following the occurrence of such breach;

17. This Final Order or the Interim Order is modified, amended, reversed, vacated or stayed in a manner materially adverse to the DIP ABL Secured Parties or the Prepetition ABL Secured Parties without the prior written consent of DIP ABL Agent;

18. A trustee or examiner is appointed or elected in any of these chapter 11 cases; and

19. If any warranty, representation or covenant contained in the first sentence of Sections 4.5 (Title to Assets; No Encumbrances) to the extent applicable to personal property, and subject to entry of the DIP Orders; Section 4.7 (Compliance with Laws); Section 4.13 (Patriot Act); Section 4.17 (Government Regulation); Section 4.18 (OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws); Section 4.19 (Employee and Labor Matters); Section 4.26 (Inventory Records); Section 5.6 (Insurance); Section 5.7 (Inspection); and Section 5.15 (OFAC) of the Prepetition ABL Credit Agreement, each of which shall be deemed made at any time the Debtors request a borrowing under the DIP ABL Agreement, or in any certificate with respect to Section 4.22, or Section 4.23 or Section 4.26 of the Prepetition ABL Credit Agreement or any reporting delivered pursuant to Paragraph 36(b) of this Final Order or the Interim Order, proves to be untrue in any material respect as of the date of the making or deemed making of a borrowing under the DIP ABL Agreement; provided that the foregoing representations, warranties and covenants, when made or deemed made, shall (x) exclude the effect of the filing of these chapter 11 cases and the events and conditions leading thereto and resulting therefrom and (y) in the case of Sections 4.13 and 4.18 shall be subject to the knowledge of the Debtors.