

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
DAYTON SUPERIOR CORPORATION,	:	Case No. 09-11351 (BLS)
a Delaware corporation	:	
	:	
Debtor.	:	Related Docket No. 17
	:	
	:	Hearing Date: April 21, 2009 at 1:00
	:	p.m. (EDT)

**OBJECTION OF THE AD HOC COMMITTEE OF BONDHOLDERS TO DEBTOR'S
MOTION FOR AN INTERIM AND FINAL ORDER AUTHORIZING THE DEBTOR TO
OBTAIN POST-PETITION FINANCING**

OCM Principal Opportunities Fund IV, L.P., Whippoorwill Associates, and Solus Alternative Asset Management (collectively, the "Bondholders") file this objection to the motion (the "Motion") of Dayton Superior Corporation ("Dayton Superior" and/or the "Debtor"), as debtor-in-possession in the above-captioned chapter 11 case, for entry of an Order authorizing post-petition financing pursuant to section 364 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and respectfully request as follows:

PRELIMINARY STATEMENT

1. Pursuant to the Motion, the Debtor is requesting approval of \$165 Million in post-petition debtor-in-possession financing (the "GE DIP") from General Electric Capital Corporation ("GE"). GE is also the sole lender under the Debtor's existing \$150,000,000 senior revolving credit facility (the "Revolving Credit Facility"). As of the Petition Date, there was approximately \$111,000,000 outstanding on the Revolving Credit Facility, inclusive of approximately \$8,924,107.50 in outstanding Letter of Credit Obligations issued under the Revolving Credit Facility. The terms of the GE DIP require a roll-up of the entire amount



outstanding under the Revolving Credit Facility into superpriority status. Such a roll-up is unnecessary and should not be approved, as alternative non-priming, post-petition financing is available to the Debtor.

2. The Bondholders have repeatedly offered post-petition financing to the Debtor on equal -- or better -- terms than in the GE DIP. And, most importantly, the Bondholders' DIP proposal does *not* include a roll-up of any existing debt. This Court should not permit the Debtor to accept post-petition financing from GE, which includes a roll-up for the benefit of one creditor, to the detriment of the Debtor and its remaining creditors, particularly when there is a better alternative available. A roll-up is an extraordinary measure and should not be approved when there is superior, alternative financing available, as is the case here. The Bondholders respectfully request that the Court deny the Debtor's Motion.

BACKGROUND

3. On April 19, 2009 (the "Commencement Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

4. The Debtor is an issuer of \$170 million in 13% Senior Subordinated Notes Due 2009 (the "Senior Subordinated Notes"). As of the Petition Date approximately \$161,470,500 was outstanding under the Senior Subordinated Notes. The Bondholders hold approximately \$100 million of the outstanding Senior Subordinated Notes.

5. Since August 2008, the Bondholders have attempted to engage the Debtor in discussions regarding the terms of a consensual restructuring. The Debtor has proposed two options: (1) an offer to convert the Senior Subordinated Notes into equity, and (2) the Bondholders' own DIP proposal, which does not include a roll-up.

6. Beginning November 2008, the Bondholders had extensive conversations with the Debtor concerning a possible conversion of the Senior Subordinated Notes into equity securities representing 100% of the restructured Debtor. On January 27, 2009, the Bondholders presented a Term Sheet to the Debtor reflecting this arrangement. At the time, the Debtor informed the Bondholders that it was exploring a potential sale and was in discussions with its existing secured lenders to obtain extensions of the impending maturity of such secured lenders' credit facilities. Despite a number of additional inquiries by the Bondholders, the Debtor did not pursue discussions with the Bondholders at that time. On March 31, 2009, at the Debtor's prompting, the Bondholders renewed discussions concerning a possible conversion of the Senior Subordinated Notes into equity. As a result of these discussion, the Bondholders submitted a restructuring proposal on April 9, 2009 that included a proposal for an exit facility provided by the Debtor's existing senior lenders, and subsequently attempted to engage GE (the Debtor's existing lender under its Revolving Credit Facility) in constructive discussions regarding the terms of such exit financing. However, GE has been unwilling to engage in discussions and has not responded to the Bondholders' proposal.

7. At the same time, having learned of GE's attempt to roll-up the entire revolver loan into its DIP facility, thereby elevating \$111 million of debt to a super-priority status, the Bondholders offered the Debtor their own debtor-in-possession financing proposal (the "Bondholders DIP Proposal"). This proposal offers post-petition financing on terms superior to that of the GE DIP and includes *no roll-up* of new funds into existing debt.

8. The Bondholders submitted their initial DIP proposal to the Debtor on April 9, 2009. Debtor's counsel reviewed the proposal and submitted comments to the Bondholders on April 15, 2009, almost all of which were accepted by the Bondholders. The Bondholders have

since submitted a revised DIP proposal that offers the same \$55 million in post-petition financing sought in the Debtor's Motion and all other material terms sought by the Debtor. Indeed, the Bondholders have made clear to the Debtor that they are willing to *match all of the lending terms in GE's DIP proposal*. In point of fact, the Bondholders DIP Proposal actually offers *more* favorable terms than the GE DIP for which the Debtor seeks approval. (Blackline comparison of the DIPs attached as Ex. A) The Bondholders DIP Proposal is superior to the GE DIP proposal in every material respect, including, but not limited to, (a) the absence of a roll-up, (b) increased available liquidity and certainty for such liquidity, (c) lower pricing, (d) greater flexibility for exit from chapter 11, (e) more flexible covenants, and (f) provision for adequate protection interest, fee and expense payments on the term loan facility, which is not provided for in the GE DIP. In addition, the Bondholders DIP Proposal does not prime the Debtor's existing senior lenders, and, importantly, the Bondholders DIP Proposal has the support of the Debtor's term loan lenders. Additionally, the Debtors' pre-petition secured creditors will be adequately protected under the Bondholders DIP Proposal.

9. Despite these efforts by the Bondholders, Debtor now seeks DIP financing that is unfair to the remaining creditors and contrary to well established law given the availability of a superior alternative. The Motion seeks to elevate \$111 million of the obligations due under the revolver facility to post-petition superpriority status even though there is alternative post-petition financing available that would not roll-up any pre-petition debt. As such, if approved, the GE DIP would, on the first day of the Chapter 11 Case and on less than 48 hours' notice, result in a restructuring of the Debtors' balance sheet in a manner that leads to in excess of \$160 million that will require payment in full prior to any exit from bankruptcy by the Debtor, foreclosing this sum from the negotiations that are the foundations of a consensual plan of reorganization.

Moreover, the roll-up is also likely to hinder the Debtor's eventual emergence from bankruptcy as the Debtor will face the hurdle of repaying \$160 million directly to GE prior to any exit from Chapter 11. Where, as here, an alternative to the roll-up financing exists, the GE DIP should not be approved.

Roll-Ups Are Disfavored in Chapter 11 Cases

10. The "Bankruptcy Act did not give bankruptcy courts the authority to grant compensation of post-petition funds except as provided by the Bankruptcy Code," and there is no "specific provision of the Code that would allow the payment of post-petition funds to satisfy pre-petition claims." *Matter of Oxford Management, Inc.*, 4 F.3d 1329, 1334 (5th Cir. 1993) (finding that "[b]y commanding payment, the bankruptcy court ... deviated from the pro rata scheme of distribution envisioned by the Code [and] effectuated an impermissible substantive alteration of the Code's provisions") (citations omitted); *see also In re Allegheny Intern., Inc.*, 118 B.R. 282, 296 (Bankr. W.D. Pa. 1990) ("It is beyond dispute that a debtor may not pay creditors outside of a plan of reorganization. [C]ourts have held that such attempts were an impermissible circumvention of the Bankruptcy Code.").

11. Given the devastating effect that a roll-up can have on a debtor and its creditors, courts view requests for post-petition financing that include roll-up provisions with significant skepticism. "In the absence of extraordinary circumstances," the Court "shall not" approve interim financing orders that include provisions "that deem pre-petition secured debt to be post-petition debt or that use post-petition loans from a pre-petition secured creditor to pay part or all of that secured creditor's pre-petition debt." Del. Bankr. L. R. 4001-2(a)(i)(E) and (b). In other words, the Court cannot approve the proposed DIP financing at this interim stage unless the Debtor can show extraordinary circumstances warranting the roll-up provision.

12. There are no such extraordinary circumstances present here. To the contrary, the Debtor cannot dispute that it has an alternative available source of post-petition financing that does not include an objectionable roll-up provision and that contains equal or superior financing terms to the GE DIP. The Debtor's inability to demonstrate extraordinary circumstances requires the denial of the Motion.

The Motion Should Not Be Approved When A More Favorable Alternative is Available

13. Even if extraordinary circumstances existed -- and they do not -- they would not be sufficient to gain the Court's approval of the GE DIP. There are also several factors the Court must consider before approving § 364 post-petition financing. Specifically, the Court cannot approve the DIP financing unless the Court determines:

- (1) That the proposed financing is an exercise of sound and reasonable business judgment;
- (2) That no alternative financing is available on any other basis;
- (3) That the financing is in the best interests of the estate and its creditors; and
- (4) As a corollary to the first three points, that no better offers, bids, or timely proposals are before the court[;]
- [5] That the credit transaction is necessary to preserve the assets of the estate[;]
- [6] That the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender[;]
- [7] That the financing is necessary, essential, and appropriate for the continued operation of the Debtors' businesses and the preservation of their estates[; and]
- [8] That the financing agreement was negotiated in good faith and at arm's length between the Debtors, on the one hand, and the Agents and the Lenders, on the other hand.

In re Farmland Industries, Inc. 294 B.R. 855, 879-80 (Bankr. W.D. Mo. 2003) (“[A]ll of the enumerated factors are factors that should be considered by a bankruptcy court in determining whether an *initial* § 364 post-petition financing agreement should be approved.”) (original emphasis).

14. Both the second and fourth factors of the *Farmland Industries* test require consideration of whether alternative financing arrangements are available to the Debtor. Here, not only is an alternative arrangement available to the Debtor, but on terms that are *fairer and more reasonable* than those in the GE DIP. For this reason alone the Court should decline to approve the GE DIP.¹

¹ Debtor asserts that this Court has “recently granted relief consistent with the Motion (including repayment of prepetition secured debt) under similar circumstances in several cases.” (Debtor’s Mot. ¶ 33). Yet, in fact, the cited cases specifically state that alternative financing was either not available or not available on equal or more favorable terms. See *In re Motor Coach Industries International, Inc.*, Case No. 08-12136 (BLS) (Bankr. D. Del. Sept. 16, 2008) (*Motor Coach Debtors’ Mot.* ¶ 26) (“[T]he GE Capital proposal was superior because it was materially less expensive.”); *In re Vertis Holdings, Inc.*, Case No. 08-11460 (CSS) (Bankr. D. Del. July 16, 2008) (*Vertis Debtors’ Mot.* ¶¶ 61, 96) (“[T]he Debtors were unable to obtain ... proposals contain[ing] more advantageous economic terms in the aggregate.”); *LandSource Cmty. Dev. LLC*, Case No. 08-11111 (KJC) (Bankr. D. Del. June 10, 2008) (*LandSource Debtors’ Mot.* ¶¶ 24, 25) (“[T]he pricing of each of these alternate proposals, in the aggregate, was no more favorable than that offered by the Postpetition Lenders.”) (emphasis added); *In re Linens Holding Co.*, Case No. 08-10832 (CSS) (Bankr. D. Del. May 28, 2008) (*LHC Debtors’ Mot.* ¶ 20) (“[T]he Debtors were unable to obtain alternative postpetition financing proposals.”); *In re Hoop Holdings, Inc.*, Case No. 08-10544 (BLS) (Bankr. D. Del. April 16, 2008) (Final Order ¶ (F)(ii)) (“The Debtor is also unable to obtain secured credit ... on more favorable terms than those provided in the DIP Loan Agreement[.]”); *In re Buffets Holdings Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 22, 2008) (Interim Order ¶ (4)(c)) (“The Debtors also are unable to obtain secured credit under sections 364(c) or 364(d) ... on equal or more favorable terms than those set forth in the DIP Documents.”); *In re Sharper Image Corp.*, Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008) (*Sharper Image Debtor’s Mot.* ¶ 37) (“The Debtor has not been able to obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions.”); *In re Dura Automotive Systems, Inc.*, Case No. 06-11202 (KJC) (Bankr. D. Del. Nov. 21, 2006) (*Dura Debtors’ Mot.* ¶ 17) (“[T]he Debtors chose the GSCP/GECC proposal as providing the most advantageous and least costly terms to the Debtors’ estates.”); *In re Radnor Holdings Corp.*, Case No. 06-10894 (PJW) (Bankr. D. Del. Sept. 22, 2006) (Interim Order ¶ 8(c)) (“The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders.”); *In re Ultimate Electronics, Inc.*, Case No. 05-10104 (PJW) (Bankr. D. Del. Feb. 14, 2005) (*UEI Debtors’ Mot.* ¶¶ 23) (“[T]he Debtors were unable to find a lender willing to provide funding on a priming basis in an amount sufficient to satisfy the Debtors’ financing needs.”); *In re Comdial Corp.*, Case No. 05-11492 (MFW) (Bankr. D. Del. June 29, 2005) (*Comdial Debtors’ Mot.* ¶ 44) (“[No other lenders] were willing to provide the Debtors with the proposed DIP financing at all or on more favorable financial terms [than] those proposed by the DIP lender.”)

15. What is more, the Court will not permit the Debtor to “exercise [its] reasonable judgment” if the proposed financing agreement “contain[s] terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”” *In re Farmland Industries, Inc.* 294 B.R. 855, 884 (Bankr. W.D. Mo. 2003) (citing *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990)). In making this determination, “courts have focused their attention on proposed terms that would tilt the conduct of the bankruptcy case; prejudice, at an early stage, the powers and rights that the Bankruptcy Code confers for the benefit of all creditors.” *In re Ames Dept. Stores, Inc.*, 115 B.R. at 37. In particular, courts will not approve a financing agreement that will “pervert the reorganization process from one designed to accommodate all classes of creditors and equity interests to one specifically crafted to benefit [the senior secured lender providing the DIP].” *In re Tenney Village Co.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989).

16. Throughout these negotiations, the Bondholders have made clear to the Debtor that they are willing to ***match all of the lending terms in GE’s DIP proposal***. In point of fact, the Bondholders DIP Proposal actually offers ***more*** favorable economic terms than the GE DIP for which the Debtor seeks approval. The Bondholders DIP Proposal is superior to the GE DIP proposal in every material respect, including, but not limited to, (a) the absence of a roll-up, (b) increased available liquidity and certainty for such liquidity, (c) lower pricing, (d) greater flexibility for exit from chapter 11, (e) more flexible covenants, and (f) provision for adequate protection interest, fee and expense payments on the term loan facility, which is not provided for in the GE DIP. The Bondholders have attached a chart detailing these distinctions. (Attached as Ex. B) Among the more important differences, the Bondholders have offered an interest rate of LIBOR (minimum 3.0%) + 450 bps, compared to LIBOR (minimum 3.25%) + 1200 bps by GE,

leading to a current effective rate of 7.5% in the Bondholders DIP Proposal versus 15.25% in GE's DIP. Importantly, in the GE DIP Proposal, the 15.25% interest rate would apply to the *entire* roll-up of up to \$165 million, as compared to 7.5% on only \$55 million of post-petition funding in the Bondholders DIP Proposal. The GE DIP essentially doubles the interest rate on triple the money. The Bondholders DIP Proposal also includes significantly lower fees -- the GE DIP charges 4% of \$165.7 million, while the Bondholders DIP Proposal seeks only 3% of \$55 million. This leads to a difference of \$6.6 million in fees to GE and only \$1.65 million to the Bondholders. With respect to liquidity, there are only commitments of \$54.35 million of new money in the GE DIP, of which \$6.5 million will be used for the fees, and with respect to which there appears to be an "availability block" of an additional \$5 million. Furthermore, the Debtor will be subject to discretionary imposition of reserves by GE, and repayments on the GE facility could be required as a result of any discretionary modifications to the borrowing base criteria by GE as well as from any business deterioration in the borrowing base. The Bondholders DIP Proposal includes no such restrictions.

17. In offering DIP financing to the Debtor, GE has insisted on various terms designed to afford it control over the reorganization process. For example, the GE DIP defines "termination event" as the earliest to occur of four possibilities. (Ex. C at 27) Clause (b) defines "termination event as occurring" if there is not within 45 days of the Petition Date either a "definitive lock-up, purchase or similar agreement" or a motion to approve bid procedures for the sale of all or substantially all of the assets of the Debtor. As a result, the GE DIP could allow GE to force a quick sale on its own terms within the first 45 days of the restructuring to avoid termination of the GE DIP, thereby drastically reducing the leverage of the other creditors and

leaving GE control of the restructuring negotiations. The Bondholders DIP Proposal contains no provision requiring a sale.

18. Finally, the massive roll-up contemplated by the Debtor and GE “was specifically crafted to benefit” one class of lender, thereby unnecessarily restricting the Debtor’s options in Chapter 11, including the Debtor’s right to cram up the pre-petition secured debt, which will now have superpriority. *See In re Tenney Village Co.*, 104 B.R. at 568 (disapproving of DIP financing where the “Bank would have the ultimate say over the very goal of this Chapter 11 case, a confirmed plan of reorganization. No longer could a plan be confirmed over the Bank’s objection under the cram-down provisions of § 1129(b)(2)(A)”). Much like the parties in *In re Tenney*, with the approval of the GE DIP, the parties to the instant case would be stripped of the ability to negotiate the use of the Bankruptcy Code’s cram-down/cram-up mechanism with respect to the rolled-up senior secured debt. The court in *In re Tenney* found it “[e]qually shocking” that the Bank was attempting “to disarm the representative of the bankruptcy estate,” because the Bank’s “existing liens would become unassailable even before appointment of counsel to the creditors’ committee[.]” 104 B.R. at 568. The same is true here, as GE is attempting to use the superpriority status conferred by a roll-up to insulate its existing lien from the bankruptcy process, prior to the creation of the creditor’s committee.² For these reasons it cannot be said that the GE DIP is in the “best interests of the estate and its creditors” or that the terms of the GE DIP are “fair, reasonable, and adequate.” *In re Farmland Industries, Inc.*, 294 B.R. at 879-80. The Bondholders DIP Proposal, on the other hand, is favorable to the Debtor

² This is especially disconcerting given the central role of the creditors’ committee in a bankruptcy proceeding. *See, e.g., Off. Comm. of Unsec. Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 562 (3d Cir. 2003) (noting that Congress intended committees “to play a vibrant and central role in Chapter 11 adversarial proceedings”); *see also* 11 U.S.C. § 1103(c)(3) (committee is empowered to participate in the formulation of a plan).

and more equitable to the existing creditors as it will not unnecessarily superprioritize pre-petition debt.

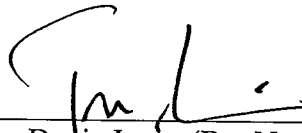
Bankruptcy Rule 4001 Prevents Approval of the GE DIP Proposal at This Stage

19. Even if the Court is inclined to approve the GE DIP with the inclusion of a roll-up, such approval is inappropriate at this interim stage. Prior to a final hearing, which requires a minimum of fifteen days' notice, the "court may authorize the obtaining of credit *only to the extent necessary to avoid immediate and irreparable harm to the estate*" Fed. R. Bankr. P. 4001(c)(2) (emphasis added). The Court, therefore, should only approve post-petition financing in an amount limited to that which is necessary to avoid immediate and irreparable harm between now and the final hearing. *See id.*; *see also In re The Colad Group, Inc.*, 324 B.R. 208, 218 (Bankr. W.D.N.Y. 2005) (finding an emergency funding order unacceptable where, among other things, "[t]he order failed to reflect any effort to limit the conditions of credit only to those which would be absolutely necessary to avoid immediate and irreparable harm").

20. The Debtor has not shown that the GE DIP, which includes a more than \$111 million roll-up, is the amount needed to avoid immediate and irreparable harm. In fact, it strains credulity for the Debtor to claim that it is necessary to roll-up \$111 million in pre-petition secured debt to prevent such harm at this interim stage, particularly since there can be no argument of immediate and irreparable harm where the Bondholders have offered alternative DIP financing. A roll-up of that magnitude should only be considered at a final hearing upon regular notice as required by Bankruptcy Rule 4001(c)(2). Thus, at a minimum, the Motion must be denied to the extent it seeks to include the roll-up in the interim financing.

Dated: April 20, 2009

Respectfully submitted,



Laura Davis Jones (Bar No. 2436)
Timothy P. Cairns (Bar No. 4228)
PACHULSKI STANG ZIEHL & JONES LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile (302) 652-4400

and

James H.M. Sprayregen, P.C.
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Yosef Riemer
Lisa Laukitis
Lee Ann Stevenson
Citigroup Center
153 East 53rd Street
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

*Co-Counsel to the Ad Hoc Committee of
Bondholders*

Exhibit A

~~\$165,000,000~~55,000,000

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

Dated as of April [], 2009

among

~~DAYTON SUPERIOR CORPORATION, AS THE DEBTOR AND~~
~~DEBTOR-IN-POSSESSION~~BORROWER

~~THE LENDERS AND L/C ISSUERS PARTY HERETO~~

and

~~GENERAL ELECTRIC CAPITAL CORPORATION~~[OCM POE IV DS INVESTMENTS
LTD.]

AS THE ADMINISTRATIVE AGENT AND COLLATERAL AGENT

◆◆◆

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

SENIOR SECURED
~~PRIMING AND SUPERPRIORITY DEBTOR-IN-POSSESSION~~
REVOLVING CREDIT AGREEMENT
[DAYTON SUPERIOR CORPORATION]

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SENIOR SECURED PRIMING AND SUPERPRIORITY DEBTOR-IN-POSSESSION
REVOLVING CREDIT AGREEMENT
[DAYTON SUPERIOR CORPORATION]

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~~This Senior Secured Priming and Superpriority Debtor-in-Possession Revolving Credit Agreement~~SENIOR SECURED DEBTOR-IN-POSSESSION REVOLVING CREDIT AGREEMENT, dated as of April [____], 2009, is entered into among DAYTON SUPERIOR CORPORATION, a Delaware corporation (the "Borrower"), as debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, the Lenders (as defined below), the L/C Issuers (as defined below) and ~~GENERAL ELECTRIC CAPITAL CORPORATION ("GE Capital")~~ and IOCM POE IV DS INVESTMENTS LTD., as administrative agent and collateral agent for the Lenders and the L/C Issuers (in such capacity, and together with its successors and permitted assigns, the "Administrative Agent").

WHEREAS, on May [____], 2009 (the "Petition Date"), Borrower commenced Chapter 11 Case No. [____] (the "Chapter 11 Case") by filing a voluntary petition for reorganization under Chapter 11, 11 U.S.C. 101 et seq. (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Borrower continues to operate its business and manage its properties as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Borrower has requested that Lenders provide a senior secured, super-priority revolving credit facility to Borrower of up to Fifty Five Million Dollars (\$55,000,000) in the aggregate to fund the working capital requirements of Borrower during the pendency of the Chapter 11 Case;

WHEREAS, Lenders are willing to make certain postpetition loans to Borrower of up to such amount upon the terms and conditions set forth herein; and

WHEREAS, the Borrower has agreed to secure all of its Obligations under the Loan Documents by granting to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, a security interest in and lien upon all of their existing and after-acquired personal and real property;

The NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

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

"Account Debtor" means any Person who may become obligated to the Borrower under, with respect to, or on account of, an Account, Chattel Paper or General Intangibles (including a payment intangible).

"Accounts" means all "accounts," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, including (a) all accounts receivable, other receivables, Rentals, book debts and other forms of obligations (other than, except in the case of Rentals, forms of obligations evidenced by Chattel Paper or Instruments), (including any such obligations that may be characterized as an account or contract right under the UCC), (b) all of the Borrower's rights in, to and under all purchase orders or receipts for goods or services, (c) all of the Borrower's rights to any goods represented by any of the

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foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to the Borrower for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by the Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of the Borrower), (e) all healthcare insurance receivables, and (f) all collateral security of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

"Affected Lender" has the meaning specified in Section 2.18.

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

"Agreement" means this Senior Secured Priming and Superpriority Debtor-in-Possession Revolving Credit Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

"Applicable Budget" means (i) in the case of the first Budget Period, the Budget delivered on the Closing Date, and (ii) in the case of any subsequent Budget Period, the portion of the immediately prior Budget covering the first four weeks of such Budget Period, and the immediately succeeding Budget covering the last 13 weeks of such Budget Period.

"Applicable Margin" means (i) in the case of any Revolving Loan that is a Eurodollar Rate Loan, 12.00% per annum and (ii) in the case of any Revolving Loan or Swing Loan that is a Base Rate Loan 11.00% per annum.

"Applicable Margin" means a percentage equal to 4.5% per annum.

"Approved Fund" means, with respect to any Lender, any Person (other than a natural Person) that (a) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

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

"Avoidance Actions" has the meaning specified in Section 2.21-2.19.

"Bankruptcy Code" means 11 U.S.C 101 et seq has the meaning specified in the recitals.

"Bankruptcy Court" means *the United States Bankruptcy Court for the District of Delaware.*

"Base Rate" means the greatest of (i) the rate last quoted by The Wall Street Journal as the "Prime rate" (viz., as of the date hereof, the base rate posted by 70% of the nation's largest banks) in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent), (ii) 400 basis points in excess of the Federal Funds Rate, (iii) 4.25% per annum and (iv) a per annum rate equal to the Eurodollar Rate calculated based on an Interest Period of three months plus the difference between the Applicable Margin for Eurodollar Rate Loans and the Applicable Margin for Base Rate Loans.

"Base Rate Loan" means any Loan that bears interest based on the Base Rate has the meaning specified in the recitals.

"Benefit Plan" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Group Member incurs or otherwise has any obligation or liability, contingent or otherwise.

"Bid Procedures Motion" has the meaning specified in the definition of "Termination Event."

"Borrowing" means a borrowing consisting of Loans (other than Swing Loans and Loans deemed made pursuant to Section 2.3 or 2.4) made on the same day by the Lenders according to their respective Commitments.

"Borrowing Availability" means as of any date of determination the least of (i) the aggregate Commitments less any Revolving Credit Outstandings then outstanding (including, without duplication, the outstanding balance of L/C Obligations and Swing Loans then outstanding), and (ii) the Borrowing Base, less any Revolving Credit Outstandings then outstanding (including, without duplication, the outstanding balance of L/C Obligations and Swing Loans then outstanding).

"Borrowing Availability Block" means, from and including the Closing Date through July 31, 2009, an amount equal to \$5,000,000, from and including August 1, 2009 through October 15, 2009, an amount equal to \$10,000,000 and thereafter, an amount equal to \$15,000,000.

"Borrowing Base" means, as of any date of determination by the Administrative Agent, an amount equal to the sum at such time of:

(a) — 85% of the net amount of Eligible Accounts of the Borrower and its Domestic Subsidiaries which are not more than 120 days past invoice date and 80% of the net amount of Eligible Accounts of the Borrower and its Domestic Subsidiaries which are more than 120 and not more than 150 days past invoice date, in each case, at such time (such percentages being subject to adjustment as provided in Section 2.19); plus

(b) — ~~(i) the lesser of (x) 60% of the cost of Eligible Inventory (other than Rental Fleet) or (y) 85% of the Net Orderly Liquidation Value of Eligible Inventory (other than Rental Fleet) of the Borrower and its Domestic Subsidiaries (such percentages being subject to adjustment as provided in Section 2.20); plus (ii) the lesser of (x) 60% of the cost of the Rental Fleet or (y) 85% of the Net Orderly Liquidation Value of the Rental Fleet of the Borrower and its Domestic Subsidiaries (such percentages being subject to adjustment as provided in Section 2.20); minus~~

(c) — ~~Reserves required by the Administrative Agent in its Permitted Discretion; minus~~

(d) — ~~\$15,000,000. "Borrowing Base Certificate" has the meaning specified in Section 6.1(j).~~

"Budget" means each thirteen week cash flow forecast, which has been accepted by the Administrative Agent and which is in form and substance satisfactory to the Administrative Agent, in its sole discretion.

"Budget Period" means (i) in the case of the Budget delivered on the Closing Date, the period of 13 weeks beginning with the Petition Date and ending on the last day of the 13th week covered by such Budget and (ii) in the case of any Budget subsequently delivered, beginning on the first day of the 10th week covered by the Budget delivered immediately prior to such Budget and ending on the last day of the 13th week covered by such Budget.

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

"Business Plan" means Borrower's business plan which shall include a consolidating and consolidated income statement and statement of cash flows, a balance sheet, and a financial forecast and a Borrowing Base utilization and Borrowing Availability forecast on a monthly basis from the Petition Date through March 31, 2010, 2010, prepared by Borrower's management.

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

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

"Carve-Out" has the meaning specified in Section 2.21-2.19.

"Carve-Out Trigger Date" has the meaning specified in Section 2.21-2.19.

"Carve-Out Trigger Notice" has the meaning specified in Section 2.21-2.19.

~~"Cash Collateral Account"~~ means a deposit account or securities account in the name of the Borrower and under the sole control (as defined in the applicable UCC) of the Administrative Agent and (a) in the case of a deposit account, from which the Borrower may not make withdrawals except as permitted by the Administrative Agent and (b) in the case of a securities account, with respect to which the Administrative Agent shall be the entitlement holder and the only Person authorized to give entitlement orders with respect thereto.

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

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

"Change of Control" means any of the following: (i) (x) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than Odyssey Investment Partners, one or more of its Related Parties or a Permitted Group, shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the "beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, except that such person or group shall be deemed to have beneficial ownership of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the voting power of the issued and outstanding shares of Stock of the Borrower having the right to vote for the election of directors of the Borrower under ordinary circumstances, and (y) Odyssey Investment Partners and its Related Parties and any Permitted Group collectively "beneficially own" (as defined above), directly or indirectly, in the aggregate a lesser percentage than such "person" or "group" of the voting power of the issued and outstanding shares of Stock of the Borrower having the right to vote for the election of directors of the Borrower under ordinary circumstances and do not have the right or ability to designate for election a majority of the Board of Directors of the Borrower; or (ii) for so long as any Senior Subordinated Notes are outstanding, the occurrence of a "Change of Control" (as defined in the Senior Subordinated Notes Indenture), in each case other than any Change of Control resulting from a plan of reorganization upon consummation of which all Obligations are paid in full in cash the Plan.

For the purpose of this definition, a person or group shall be deemed to beneficially own Stock in a person held by a parent entity if such person or group beneficially owns (as defined above) more than 50% of the issued and outstanding shares of Stock of such parent entity having the right to vote for the election of directors of such parent entity under ordinary circumstances.

"Chapter 11 Case" means Chapter 11 Case No. [], filed on [], 2009 by the Borrower by filing a voluntary petition with the Bankruptcy Court has the meaning specified in the recitals.

"Chattel Paper" means any "chattel paper," as such term is defined in the UCC, including electronic chattel paper, now owned or hereafter acquired in connection with this Agreement, the other Loan Documents and the transactions contemplated thereunder.

"Closing Checklist" means the checklist of closing items attached hereto as Exhibit I.

"Closing Date" means the date and time at which the first Loan is made or any Letter of Credit is issued hereunder.

"Code" means the U.S. Internal Revenue Code of 1986.

"Collateral" means all property and interests in property and proceeds thereof now owned or hereafter acquired by the Borrower in or upon which a Lien is granted or purported to be granted pursuant to any Loan Document or pursuant to any Order.

"Commitments" means, collectively, the Initial Loan Commitments and the Incremental Revolving Loan Commitments.

"Commitment" means, with respect to each Lender, the commitment of such Lender to make Revolving Loans and acquire interests in other Revolving Credit Outstandings, which commitment is in the amount set forth opposite such Lender's name on Schedule I under the caption "Commitment", as amended to reflect Assignments and as such amount may be reduced pursuant to this Agreement. The aggregate amount of the Commitments on the date hereof equals \$55,000,000.

"Committees" means collectively, the official committee of unsecured creditors (and any other committee) appointed by the Office of the United States Trustee or by order of the Bankruptcy Court in the Chapter 11 Case and each such Committee shall be referred to herein as a Committee.

"Compliance Certificate" means a certificate substantially in the form of Exhibit G.

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

"Consolidated EBITDA" means, with respect to any Person for any period, (a) the Consolidated Net Income of such Person for such period plus (b) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication, (i) any provision for United States federal income taxes or other taxes measured by net income, (ii) Consolidated Interest Expense,

amortization of debt discount and commissions and other fees and charges associated with Indebtedness (including, in the case of the Borrower, the Loans and the "Loans" and "Letters of Credit," as applicable, under and as defined in each Pre-Petition Credit Agreement), (iii) any loss from extraordinary items, (iv) any depreciation, depletion and/or amortization expense, (v) any aggregate net loss on the Sale of property (other than accounts (as defined under the applicable UCC) and inventory) outside the ordinary course of business and, (vi) any other non-cash expenditure, charge or loss for such period (other than including, but not limited to, impairment of goodwill and excluding any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to accounts and inventory), including the amount of any compensation deduction as the result of any grant of Stock or Stock Equivalents to employees, officers, directors or consultants and, (vii) any business optimization costs and expenses specifically identified by Borrower to Administrative Agent in writing and consented to by Administrative Agent in its reasonable discretion and (viii) Restructuring Costs in an amount consented to by Administrative Agent in its reasonable discretion¹ minus (c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income and without duplication, (i) any credit for United States federal income taxes or other taxes measured by net income, (ii) any interest income, (iii) any gain from extraordinary items and any other non-recurring gain, (iv) any aggregate net gain from the Sale of property (other than accounts (as defined in the applicable UCC) and inventory) out of the ordinary course of business by such Person, (v) any other non-cash gain, including any reversal of a charge referred to in clause (b)(vi) above by reason of a decrease in the value of any Stock or Stock Equivalent, and (vi) any other cash payment in respect of expenditures, charges and losses that have been added to Consolidated EBITDA of such Person pursuant to clause (b)(vi) above in any prior period. It is agreed that Consolidated EBITDA for the Fiscal Months ended June 30, 2008 through April 30, 2009 is as set forth in Schedule 1.1(a).

"Consolidated Interest Expense" means, for any Person for any period, (a) Consolidated total interest expense of such Person and its Subsidiaries for such period and including, in any event, (i) interest capitalized during such period and net costs under Interest Rate Contracts for such period and (ii) all fees, charges, commissions, discounts and other similar obligations (other than reimbursement obligations) with respect to letters of credit, bank guarantees, banker's acceptances, surety bonds and performance bonds (whether or not matured) payable by such Person and its Subsidiaries during such period minus (b) the sum of (i) Consolidated net gains of such Person and its Subsidiaries under Interest Rate Contracts for such period and (ii) Consolidated interest income of such Person and its Subsidiaries for such period.

"Consolidated Net Income" means, with respect to any Person, for any period, the Consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be Consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

¹ If Borrower provides Administrative Agent with suggested details and dollar amount cap, Administrative Agent will work in good faith to set such amount prior to Closing Date.

"Constituent Documents" means, with respect to any Person, collectively and, in each case, together with any modification of any term thereof, (a) the articles of incorporation, certificate of incorporation, constitution or certificate of formation of such Person, (b) the bylaws, operating agreement or joint venture agreement of such Person, (c) any other constitutive, organizational or governing document of such Person, whether or not equivalent, and (d) any other document setting forth the manner of election or duties of the directors, officers or managing members of such Person or the designation, amount or relative rights, limitations and preferences of any Stock of such Person.

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

"Control Agreement" means, with respect to any deposit account (other than Excluded Accounts), any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among the Administrative Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Borrower, entitlement or contract effective to grant "control" (as defined under the applicable UCC) over such account, securities entitlement or commodities contract to the Administrative Agent.

"Controlled Deposit Account" means each deposit account (including all funds on deposit therein and excluding any Excluded Accounts) that is the subject of an effective Control Agreement and that is maintained by the Borrower with a financial institution approved by the Administrative Agent.

"Controlled Securities Account" means each securities account or commodity account (including all financial assets held therein and all certificates and instruments, if any, representing or evidencing such financial assets) that is the subject of an effective Control Agreement and that is maintained by the Borrower with a securities intermediary or commodity intermediary approved by the Administrative Agent.

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

"Corporate Chart" means a document in form reasonably acceptable to the Administrative Agent and setting forth, as of a date set forth therein, for the Borrower and each Subsidiary or joint venture thereof, (a) the full legal name of such Person, (b) ~~the jurisdiction of organization and any organizational number~~ and tax identification number of such Person, (c) the location of such Person's chief executive office (or, if applicable, sole place of business) and (d) the number of shares of each class of Stock of such Person authorized, the number outstanding and the number and percentage of such outstanding shares for each such class owned, directly or indirectly, by the Borrower or any Subsidiary of any of them.

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

(a) Liens (i) with respect to the payment of taxes, assessments or other governmental charges or (ii) of suppliers, carriers, materialmen, warehousemen, workmen or mechanics and other similar Liens, in each case imposed by law or arising in the ordinary course of business, and, for each of the Liens in clauses (i) and (ii) above for amounts that are not yet due or that are being contested in good faith by

appropriate proceedings diligently conducted and with respect to which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(b) Liens of a collection bank on items in the course of collection arising under Section 4-208 of the UCC as in effect in the State of New York or any similar section under any applicable UCC or any similar Requirement of Law of any foreign jurisdiction;

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

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

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

(f) Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and (iv) for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP; and

(g) the title and interest of a lessor or sublessor in and to personal property leased or subleased (other than through a Capital Lease), in each case extending only to such personal property.

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

"Disclosure Documents" means, collectively, all documents filed by any Group Member with the United States Securities and Exchange Commission.

"Disclosure Statement" means a disclosure statement in form and substance acceptable to the Administrative Agent acting at the direction of the Required Lenders.

"Disqualified Stock" means that portion of any Stock or Stock Equivalents which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change of Control), matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control) on or before the date that is six months after the 6th anniversary of the Closing Date.

"Dollars" and the sign "\$" each mean the lawful money of the United States.

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

"Domestic Subsidiaries" means each Subsidiary of the Borrower that is organized under the laws of a State of the United States or the District of Columbia.

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

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

~~"Eligible Accounts" has the meaning specified in Section 2.19.~~

~~"Eligible Inventory" has the meaning specified in Section 2.20.~~

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

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

"ERISA" means the United States Employee Retirement Income Security Act of 1974.

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

"ERISA Event" means any of the following: (a) a reportable event described in Section 4043(b) of ERISA (or, unless the 30-day notice requirement has been duly waived under the applicable regulations, Section 4043(c) of ERISA) with respect to a Title IV Plan, (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan, (d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA, (e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due, (h) the imposition of a Lien under Section 430(k) of the Code or Section 303(k) or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate, or a violation of Section 436 of the Code with respect to a Title IV Plan, (i) the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law to qualify thereunder and (j) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

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

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

"Eurodollar Base Rate" means, with respect to any Interest Period for any Eurodollar Rate-Loan, the greater of (i) ~~3-253.0%~~ 3.0% and (ii) the rate determined by the Administrative Agent to be the offered rate for deposits in Dollars for the applicable Interest Period appearing on the Reuters Screen LIBOR01 page as of 11:00 a.m. (London time) on the second full Business Day next preceding the first day of each Interest Period. In the event that such rate does not appear on the Reuters Screen LIBOR01 page at such time, the "Eurodollar Base Rate" shall be determined by reference to such other comparable publicly available service for displaying the offered rate for deposit in Dollars in the London interbank market as may be selected by the Administrative Agent and, in the absence of availability, such other method to determine such offered rate as may be selected by the Administrative Agent in its sole discretion.

"Eurodollar Rate" means, with respect to any Interest Period and for any Eurodollar Rate-Loan, an interest rate per annum determined as the ratio of (a) the Eurodollar Base Rate with respect to such Interest Period for such Eurodollar Rate-Loan to (b) the difference between the number one and the Eurodollar

Reserve Requirements with respect to such Interest Period and for such Eurodollar Rate Loan. "Eurodollar Rate Loan" means any Loan that bears interest based on the Eurodollar Rate.

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

"Event of Default" has the meaning specified in Section 9.1.

"Excluded Accounts" means any (a) zero balance payroll, withholding tax and other fiduciary accounts of any Group Member and (b) other deposit accounts of any Group Member that in the aggregate do not hold more than \$100,000 250,000 on an overnight basis.

"Excluded Foreign Subsidiary" means (a) any Subsidiary of the Borrower that is not a Domestic Person or is a Domestic Person all or substantially all of whose assets consists of Stock of Subsidiaries that are not Domestic Persons, and in respect of which the pledge of all of the Stock of such Subsidiary as Collateral for any Obligation of the Borrower, would, in the good faith judgment of the Borrower, result in materially adverse tax consequences to the Borrower and its Subsidiaries, taken as a whole, and which has not guaranteed any material Indebtedness of the Borrower or any Domestic Subsidiary of the Borrower and more than 66 2/3% of the voting stock of such Domestic Person has not been pledged to secure any such Indebtedness and (b) provided that it has not guaranteed any material Indebtedness of the Borrower or any Domestic Subsidiary thereof, Dayton Superior Canada Ltd.

"Existing Liens" means valid and perfected Liens in existence at the time of the commencement of the Chapter 11 Case and valid Liens in existence at the time of such commencement of the Chapter 11 Case that are perfected after such commencement as permitted by Section 546(b) of the Bankruptcy Code.

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

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

"Fee Letter" means the letter agreement, dated as of April [], 2009, addressed to the Borrower from the Administrative Agent and accepted by the Borrower, with respect to certain fees to be paid from time to time to the Administrative Agent and its Related Persons.

"Final Order" means, collectively, the orders of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which orders shall be satisfactory in form and substance to the Administrative Agent in its sole discretion, and which orders are in effect and not stayed acting at the direction of the Required

Lenders, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied unless the Administrative Agent acting at the direction of the Required Lenders waives such requirement, together with all extensions, modifications and amendments thereto, in each such case, in form and substance satisfactory to the Administrative Agent in its sole discretion acting at the direction of the Required Lenders, which, among other matters but not by way of limitation, which provides that the relief granted in the Interim Order is granted on a final basis and, in addition which (i) determines that all pre-petition Liens and claims under or in connection with the Pre-Petition Credit Agreement are deemed finally allowed and approved as legal, valid and binding Liens and claims that are not subject to any equitable subordination, defense, reduction, counterclaim or avoidance absent a timely objection thereto by a person with standing to do so (other than Borrower) within 60 days after commencement of the Chapter 11 Case; (ii) grants Liens to Administrative Agent and Lenders pursuant to section 364(c)(2) of the Bankruptcy Code against avoidance actions as contemplated herein; (iii) proscribes any surcharge of any pre-petition Liens of the Prior Administrative Agent and the Prior Lenders under the Pre-Petition Credit Agreement or post-petition Liens of the Administrative Agent and Lenders or Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise; (iv) provides for payment in full of the "Obligations" under and as such term is defined the Pre-Petition Credit Agreement on the Closing Date (other than Obligations in respect of undrawn Pre-Petition Letters of Credit, which Pre-Petition Letters of Credit shall become Letters of Credit hereunder on the Closing Date); and (v) contains a carve-out provision on Term Loan Priority Collateral in form and substance satisfactory to the Administrative Agent in its sole discretion and does not provide for a waiver of surcharge rights under section 506(c) of the Bankruptcy Code as to Term Loan Priority Collateral and (vi) and provides that in connection with payment in full in cash of the Obligations in any confirmed plan of reorganization of the Borrower in the Chapter 11 Case, proceeds of the Revolving Credit Priority Collateral consisting of Unperfected Term Loan Priority Collateral shall be deemed to have been applied to the payment of such Obligations prior the application of proceeds to such Obligations of any other Collateral. authorizes the Borrower to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this Agreement and the other Loan Documents, as the case may be, and provides for the priority of the Administrative Agent's and the Lenders' claims as set forth in Section 2.19.

"Financial Statement" means each financial statement delivered pursuant to Section 4.4 or 6.1.

"First Day Orders" means the orders entered by the Bankruptcy Court in the Chapter 11 Case pursuant to motions and applications filed by the Borrower within ten (10) days after the Petition Date, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

"Fiscal Month" means any of the monthly accounting periods of the Borrower.

"Fiscal Quarter" means each 3 Fiscal Month period ending on March 31, June 30, September 30 or December 31.

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

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

determination. Subject to Section 1.3, all references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the Financial Statements described in Section 4.4(a).

"General Intangibles" means "general intangibles," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, including all right, title and interest that the Borrower may now or hereafter have in or under any Contractual Obligation, all payment intangibles, customer lists, licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark license), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including all tapes, cards, computer runs and other papers and documents in the possession or under the control of the Borrower or any computer bureau or service company from time to time acting for the Borrower.

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

"Group Members" means, collectively, the Borrower and its Subsidiaries.

"Group Members' Accountants" means Deloitte & Touche USA LLP or other nationally-recognized independent registered certified public accountants designated by the Borrower and reasonably acceptable to the Administrative Agent.

~~"Guaranty and Security Agreement" means a guaranty and security agreement, in substantially the form of Exhibit H, between the Administrative Agent and the Borrower, as the same may from time to time be amended, restated, supplemented or otherwise modified.~~

"Guaranty Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person for any Indebtedness, lease, dividend or other obligation (the "primary obligation") of another Person (the "primary obligor"), if the purpose or intent of such Person in incurring such liability, or the economic effect thereof, is to guarantee such primary obligation or provide support, assurance or comfort to the holder of such primary obligation or to protect or indemnify such holder against loss with respect to such primary obligation, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of any primary obligation, (b) the incurrence of reimbursement obligations with respect to any letter of credit or bank guarantee in support of any primary

obligation, (c) the existence of any Lien, or any right, contingent or otherwise, to receive a Lien, on the property of such Person securing any part of any primary obligation and (d) any liability of such Person for a primary obligation through any Contractual Obligation (contingent or otherwise) or other arrangement (i) to purchase, repurchase or otherwise acquire such primary obligation or any security therefor or to provide funds for the payment or discharge of such primary obligation (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency, working capital, equity capital or any balance sheet item, level of income or cash flow, liquidity or financial condition of any primary obligor, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party to any Contractual Obligation, (iv) to purchase, sell or lease (as lessor or lessee) any property, or to purchase or sell services, primarily for the purpose of enabling the primary obligor to satisfy such primary obligation or to protect the holder of such primary obligation against loss or (v) to supply funds to or in any other manner invest in, such primary obligor (including to pay for property or services irrespective of whether such property is received or such services are rendered); provided, however, that "Guaranty Obligations" shall not include (x) endorsements for collection or deposit in the ordinary course of business and (y) product warranties given in the ordinary course of business. The outstanding amount of any Guaranty Obligation shall equal the outstanding amount of the primary obligation so guaranteed or otherwise supported or, if lower, the stated maximum amount for which such Person may be liable under such Guaranty Obligation.

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

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

~~"Incremental Borrowing Availability" means as of any date of determination the aggregate Incremental Revolving Loan Commitments less the sum of (a) any Incremental Revolving Credit Outstandings then outstanding (including, without duplication, the outstanding balance of L/C Obligations and Swing Loans then outstanding), plus (b) the Borrowing Availability Block plus (c) Reserves under clause (b) of the definition of "Reserves".~~

~~"Incremental Revolving Loan" has the meaning specified in Section 2.1(b).~~

~~"Incremental Revolving Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make Incremental Revolving Loans and acquire interests in other Incremental Revolving Credit Outstandings, which commitment is in the sum of (i) the amount set forth opposite such Lender's name on Schedule I under Part A under the caption "Incremental Revolving Loan Commitment", as amended to reflect Assignments and as such amount may be reduced pursuant to this Agreement plus (ii) such Lender's Pro Rata Share of the undrawn amount as of the Closing Date of any Roll Over Letter of Credit as set forth opposite such Lender's name on Schedule I under Part B under the caption "Incremental~~

~~Revolving Loan Commitment". The aggregate amount of the Incremental Revolving Loan Commitments under clause (i) of the definition thereof on the date hereof equals \$[54,353,129.53]¹.~~

~~"Incremental Revolving Credit Outstandings" means, at any time, the sum of the outstanding principal balance of the Incremental Revolving Loans and Swing Loans plus all L/C Obligations at such time.~~

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

"Indemnified Matters" has the meaning specified in Section 11.4.

"Indemnitee" has the meaning specified in Section 11.4.

~~"Initial Loan" has the meaning specified in Section 2.1(a).~~

~~"Initial Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make Initial Loans, which commitment is in the amount set forth opposite such Lender's name on Schedule I under the caption "Initial Loan Commitment", as amended to reflect Assignments and as such amount may be reduced pursuant to this Agreement. The aggregate amount of the Initial Loan Commitments on the date hereof equals \$[101,722,762.97].~~

"Initial Projections" means those financial projections, dated March 18, 2009, covering the period for the Borrower beginning on April 1, 2009 and ending on March 31, 2010 and 2010, delivered to the Prior Administrative Agent.²

¹ Commitment amounts are subject to change based on accrual of interest

² Please provide.

"Instruments" means all "instruments," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

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

~~"Interest Period" means, with respect to any Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is made or converted to a Eurodollar Rate Loan or, if such loan is continued, on the last day of the immediately preceding Interest Period therefor and, in each case, ending one month thereafter; provided, however, that (a) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless the result of such extension would be to extend such Interest Period into another such Business Day falls in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month, (c) the Borrower may not select any Interest Period ending after the Scheduled Maturity Date, (d) the Borrower may not select any Interest Period in respect of Loans having an aggregate principal amount of less than \$5,000,000 and (e) there shall be outstanding at any one time no more than 5 Interest Periods.~~

"Interest Period" means, with respect to any Loan, (a) initially the period commencing on the Closing Date and ending on [April 30, 2009], and (b) thereafter, commencing on (and including) the first day of each calendar month and ending on (and including) the last day of such calendar month.

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

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

"Interim Order" means, collectively, the orders of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extension, modifications, and amendments thereto, in each such case in form and substance satisfactory to the Administrative Agent in its sole discretion acting at the direction of the Required Lenders, which, among other matters but not by way of limitation, (a) authorizes, on an interim basis, the Borrower to execute and perform under the terms of this Agreement and the other Loan Documents; approves the Borrower's stipulation to the validity, extent, amount, perfection, priority, and non-avoidability of the pre-petition claims and Liens granted under or in connection with the Pre-Petition Credit Agreement; grants Liens to, (b) grants Liens to the Administrative Agent and Lenders pursuant to section 364(c)(2) and 364(d) of the Bankruptcy Code against the Collateral (other than the Avoidance Actions) as contemplated herein; provides for the as set forth in Section 2.19, (c) provides for Permitted Adequate Protection Payments and other adequate protection with respect to the Pre-Petition Secured Debt (including, without limitation the adequate protection replacement Liens) set forth herein; (d) authorizes Administrative Agent to enforce its Liens and the Loan Documents upon or after the occurrence of an event

of default in accordance with the terms and conditions set forth in the Interim Order; ~~confers section 364(e)(1) priority status on all extensions of credit by Administrative Agent and Lenders under this Agreement;~~ (e) finds that Administrative Agent and Lenders have acted in good faith in connection with the proposed financing and are entitled to the benefits of section 364(e) of the Bankruptcy Code; provides that the Prior Administrative Agent and Pre-Petition Lenders 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 to section 552(b) of the Bankruptcy Code shall not apply to the Prior Administrative Agent or Pre-Petition Lenders with respect to proceeds, products, offspring or profits of any of the collateral securing the Pre-Petition Indebtedness; and provides that the Prior Administrative Agent and Pre-Petition Lenders shall not be subject to the equitable doctrine of marshalling; and (f) provides that the Liens granted to Administrative Agent and Lenders under this Agreement and the other Loan Documents and pursuant to the Interim Order are deemed perfected without the necessity of the Administrative Agent or any Lender filing for record of any documents, notices, or other filings (but Borrower agrees to execute and deliver to Administrative Agent, and to authorize Administrative Agent to file, any such documents; provides for payment in full of the "Obligations" under and as such term is defined the Pre-Petition Credit Agreement on the Closing Date (other than Obligations in respect of undrawn Pre-Petition Letters of Credit, which Pre-Petition Letters of Credit shall become Letters of Credit hereunder on the Closing Date); contains a carve-out provision on Term Loan Priority Collateral in form and substance satisfactory to the Administrative Agent in its sole discretion and does not provide for a waiver of surcharge rights under section 506(e) of the Bankruptcy Code as to Term Loan Priority Collateral and provides that in connection with payment in full in cash of the Obligations in any confirmed plan of reorganization of the Borrower in the Chapter 11 Case, proceeds of the Revolving Credit Priority Collateral consisting of Unperfected Term Loan Priority Collateral shall be deemed to have been applied to the payment of such Obligations prior the application of proceeds to such Obligations of any other Collateral.

"Inventory" means any "inventory," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, wherever located, including inventory, merchandise, goods and other personal property that are held by or on behalf of the Borrower for sale or lease (or that are being leased) or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, supplies or materials of any kind, nature or description used or consumed or to be used or consumed in the Borrower's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

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

"Investment" means, with respect to any Person, directly or indirectly, (a) to own, purchase or otherwise acquire, in each case whether beneficially or otherwise, any investment in, including any interest in, any Security of any other Person (other than any evidence of any Obligation), (b) to purchase or otherwise acquire, whether in one transaction or in a series of transactions, all or a significant part of the property of any other Person or a business conducted by any other Person or all or substantially all of the assets constituting the business of a division, branch, brand or other unit operation of any other Person, (c) to incur, or to remain liable under, any Guaranty Obligation for Indebtedness of any other Person, to assume the Indebtedness of any other Person or to make, hold, purchase or otherwise acquire, in each case directly or indirectly, any deposit, loan, advance, commitment to lend or advance, or other extension of credit (including by deferring or extending the date of, in each case outside the ordinary course of business, the payment of the purchase price for Sales of property or services to any other Person, to the extent such payment obligation constitutes Indebtedness of such other Person), excluding deposits with financial

institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items created in the ordinary course of business, (d) to make, directly or indirectly, any contribution to the capital of any other Person or (e) to Sell to any Affiliate any property for less than fair market value (including a disposition of cash or Cash Equivalents in exchange for consideration of lesser value); provided, however, that such Investment shall be valued at the difference between the value of the consideration for such Sale and the fair market value of the property Sold.

"Investment Property" means all "investment property," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, wherever located, including: (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of the Borrower, including the rights of the Borrower to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (iii) all securities accounts of the Borrower; (iv) all commodity contracts of the Borrower; and (v) all commodity accounts held by the Borrower.

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

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

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

"Issue" means, with respect to any Letter of Credit, to issue, extend the expiration date of, renew (including by failure to object to any automatic renewal on the last day such objection is permitted), increase the face amount of, or reduce or eliminate any scheduled decrease in the face amount of, such Letter of Credit, or to cause any Person to do any of the foregoing. The terms "Issued" and "Issuance" have correlative meanings.

"L/C Cash Collateral Account" means any Cash Collateral Account (a) specifically designated as such by the Borrower in a notice to the Administrative Agent and (b) from and after the effectiveness of such notice, not containing any funds other than those required under the Loan Documents to be placed therein.

"L/C Issuer" means (a) GE Capital or any of its Affiliates and (b) each Person that hereafter becomes an L/C Issuer with the approval of, and pursuant to an agreement with and in form and substance satisfactory to, the Administrative Agent and the Borrower, in each case in their capacity as L/C Issuers hereunder and together with their successors.

"L/C Obligations" means, for any Letter of Credit at any time, the sum of (a) the L/C Reimbursement Obligations at such time for such Letter of Credit and (b) the aggregate maximum undrawn face amount of such Letter of Credit outstanding at such time.

"L/C Reimbursement Agreement" has the meaning specified in Section 2.4(a).

"L/C Reimbursement Date" has the meaning specified in Section 2.4(e).

"L/C Reimbursement Obligation" means, for any Letter of Credit, the obligation of the Borrower to the L/C Issuer thereof, as and when matured, to pay all amounts drawn under such Letter of Credit.

"L/C Request" has the meaning specified in Section 2.4(b).

"L/C Sublimit" means \$25,000,000.

"Lender" means, collectively, the Swingline Lender and any other any financial institution or other Person that (a) is listed on the signature pages hereof as a "Lender" or (b) from time to time becomes a party hereto by execution of an Assignment, in each case together with its successors.

"Lender Expense Replacement Lien" shall have the meaning assigned to it in the Interim Order or the Final Order, as applicable.

"Letter of Credit" means any Roll-Over Letter of Credit and any letter of credit Issued pursuant to Section 2.4.

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

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

"Loan" means any loan made or deemed made by any Lender hereunder.

"Loan Documents" means, collectively, this Agreement, any Notes, the Guaranty and Security Agreement, the Mortgages, the Control Agreements, the Fee Letter, the L/C Reimbursement Agreements, the Secured Hedging Agreements, and, when executed, each document executed by the Borrower and delivered to the Administrative Agent, or any Lender or any L/C Issuer in connection with or pursuant to any of the foregoing or the Obligations, together with any modification of any term, or any waiver with respect to, any of the foregoing.

"Material Adverse Effect" means, other than any change of the type that customarily occurs as a result of the continuation of the circumstances that gave rise to the commencement of and the actual commencement of a proceeding under chapter 11 of the Bankruptcy Code, an effect that results in or causes, or could reasonably be expected to result in or cause, a material adverse change in any of (a) the condition (financial or otherwise), business, performance, operations or property of the Group Members,

taken as a whole ~~(other than any change of the type that customarily occurs as a result of the commencement of a proceeding under chapter 11 of the Bankruptcy Code)~~, (b) the ability of the Borrower to perform its obligations under any Loan Document and (c) the validity or enforceability of any Loan Document or the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under any Loan Document.

"Material Environmental Liabilities" means Environmental Liabilities exceeding \$500,000.

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

"Mortgage" means any mortgage, deed of trust or other document executed or required herein to be executed by the Borrower and granting a security interest over any owned real property in favor of the Administrative Agent as security for the Obligations.

"Mortgage Supporting Documents" means, with respect to any Mortgage for a parcel of owned real property, each document (including title policies or marked-up unconditional insurance binders (in each case, together with copies of all documents referred to therein), maps, ALTA (or TLTA, if applicable) as-built surveys (in form and as to date that is sufficiently acceptable to the title insurer issuing title insurance to the Administrative Agent for such title insurer to deliver endorsements to such title insurance as reasonably requested by the Administrative Agent), environmental assessments and reports (in the case of owned real property acquired after the Closing Date) and evidence regarding recording and payment of fees, insurance premium and taxes) that the Administrative Agent may reasonably request, to create, register, perfect, maintain, evidence the existence, substance, form or validity of or enforce a valid Lien on such parcel of real property in favor of the Administrative Agent for the benefit of the Secured Parties, subject only to Permitted Liens and such other Liens as the Administrative Agent may reasonably approve.

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

"Net Cash Proceeds" means proceeds received in cash from (a) any Sale of, or Property Loss Event with respect to, property, net of (i) the reasonable out-of-pocket cash costs, fees and expenses paid or required to be paid in connection therewith, (ii) any taxes paid or reasonably estimated to be payable as a result thereof, (iii) any amount required to be applied to the repayment of Indebtedness other than owing to any Group Member (including any premium or penalty, if any, and interest) secured by a Lien expressly permitted hereunder on any asset that is the subject of such Sale or Property Loss Event (excluding any Lien pursuant to a Loan Document) and (iv) any amounts provided as a reserve, in accordance with GAAP, against any liabilities in respect of any indemnification obligations or purchase price adjustment associated with such Sale (provided that, to the extent and at any time such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), or (b) any sale or issuance of Stock or incurrence of Indebtedness, in each case net of brokers', advisors' and investment banking fees and other reasonable underwriting discounts, commissions and other reasonable out-of-pocket cash costs, fees and expenses, in each case incurred in connection with such transaction; provided, however, that any such proceeds received by any Subsidiary of the Borrower that is not a Wholly Owned Subsidiary of the Borrower shall constitute "Net Cash Proceeds" only to the extent of the aggregate direct and indirect beneficial ownership interest of the Borrower therein.

~~"Net Orderly Liquidation Value" means, at any time, as to the Rental Fleet or as to any Eligible Inventory (other than the Rental Fleet), the net orderly liquidation value thereof determined most recently at or prior to such time in writing by an independent appraiser selected by the Administrative Agent with the consent of the Borrower, such consent not to be unreasonably withheld, each such determination to be made using the same basis and or approach to valuation consistent with the approach used in the initial determination and calculating the orderly liquidation value net of liquidation costs.~~

"Non-Excluded Taxes" has the meaning specified in Section 2.17(a).

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

"Non-U.S. Lender Party" means each of the Administrative Agent, each Lender, each L/C Issuer, each SPV and each participant, in each case that is not a Domestic Person.

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

"Notice of Borrowing" has the meaning specified in Section 2.2(a).

~~"Notice of Conversion or Continuation" has the meaning specified in Section 2.10(b). "Obligations" means, with respect to the Borrower, all amounts, obligations, liabilities, covenants and duties of every type and description owing by the Borrower to the Administrative Agent, any Lender, any L/C Issuer, any other Indemnitee, any participant, or any SPV or any Secured Hedging Counterparty arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (a) all Loans and L/C Obligations, (b) all interest, whether or not accruing after the filing of the Chapter 11 Case or after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (c) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to the Borrower under any Loan Document (including those payable to L/C Issuers as described in Section 2.11).~~

"Odyssey Investment Partners" means Odyssey Investment Partners Fund, L.P. and/or Odyssey Investment Partners, LLC and their respective Affiliates.

"Orders" means, collectively, the Interim Order and the Final Order.

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

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

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

"Pari Passu Liens" shall mean (a) the Perfected ~~Term~~Revolving Loan Priority Collateral Liens and (b) Liens on the Pre-Petition TLA Priority Collateral securing the Pre-Petition Revolving Obligations that as of the Petition Date were perfected.

"Perfected Revolving Loan Priority Collateral Liens" means Liens in favor of the "Administrative Agent" and/or "Collateral Agent" (as such terms are defined as of the Closing Date in the Pre-Petition Term Loan Credit Agreement) securing the "Obligations" (as such term is defined as the Closing Date in the Pre-Petition Term Loan Credit Agreement) on Term LoanRevolving Loan Agreement) securing the Pre-Petition Revolving Obligations on Pre-Petition RLA Priority Collateral that as of the Petition Date were perfected.

"Perfected Term Loan Priority Collateral Liens" means Liens in favor of the "Administrative Agent" and/or "Collateral Agent" (as such terms are defined as of the Closing Date in the Pre-Petition Term Loan Agreement) securing the Pre-Petition Term Obligations on Pre-Petition TLA Priority Collateral that as of the Petition Date were perfected.

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

"Permitted 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 Adequate Protection Payments" means the adequate protection payments to the secured parties under the Pre-Petition Credit Agreements pursuant to the terms of the Orders, reasonably acceptable to the Required Lenders (it being understood and agreed that the Required Lenders consent to the proposed adequate protection to be provided under the Interim Order attached hereto).³

"Permitted Group" means any group of investors that is deemed to be a "person" (as that term is used in Section 13(d)(3) of the Exchange Act) by virtue of a Voting Agreement or any similar agreement, as the same may be amended, modified or supplemented from time to time; provided, however, that no single Person (other than Odyssey Investment Partners and its Related Parties) beneficially owns (together with its Affiliates) more of the voting power of the issued and outstanding shares of Stock of the Borrower, having the right to vote for the election of directors of the Borrower under ordinary circumstances, that is beneficially owned by such group of investors than is then collectively beneficially owned by Odyssey Investment Partners and its Related Parties in the aggregate.

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

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

³ Expected to include current cash payment of interest, fees and expenses in accordance with Budget.

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

"Permitted Overadvance Amount" means ~~at any time the sum of (i) the amount of Special Overadvances (as defined in the Pre-Petition Credit Agreement) outstanding as of the Closing Date immediately prior to the making of the Initial Loan, plus (ii) the amount of Incremental Revolving Loans made in accordance with Section 2.1(b) and within the limits of Incremental Borrowing Availability and outstanding at such time, plus (iii) the excess of the aggregate amount of undrawn and unreimbursed Letters of Credit Issued in accordance with Section 2.4 and within the limits of the Incremental Borrowing Availability over the aggregate amount of undrawn Roll-Over Letters of Credit as of the Closing Date plus (iv) Swing Loans made in accordance with Section 2.3 and within the limits of Incremental Borrowing Availability and outstanding at such time.~~

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

"Petition Date" means April 19, 2009.

"Plan" means a plan of reorganization for Borrower on terms agreed to by the Administrative Agent acting at the direction of the Required Lenders (in their sole discretion).

"Post-Petition" means the time period beginning immediately upon the filing of the Chapter 11 Case.

"Post-Petition Indebtedness" means any or all Indebtedness of the Borrower incurred on or after the Petition Date.

"Pre-Petition" means the time period ending immediately prior to the Petition Date.

"Pre-Petition Credit Agreements" means the Pre-Petition Revolving Credit Loan Agreement and the Pre-Petition Term Loan Agreement.

"Pre-Petition Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of March 3, 2008, among the Pre-Petition RLA Agent, the Pre-Petition TLA Agent, and the Borrower, as amended by Amendment No. 1, dated as of March 16, 2009, Amendment No. 2, dated as of March 23, 2009 and Amendment No. 3, dated as of April 9, 2009. "Pre-Petition Indebtedness" means any or all Indebtedness of the Borrower incurred prior to the Petition Date and outstanding on the Petition Date. 1 to Intercreditor Agreement, dated as of June 10, 2008, without giving effect to any other amendments, restatements, supplements or other modifications without the prior written consent of the Administrative Agent.

"Pre-Petition Intercreditor Agreement" means the Intercreditor Agreement, dated as of March 3, 2008, by and among Borrower, the Prior Administrative Agent and the Administrative Agent under (and as such term is defined in) Loan Documents" means the "Loan Documents" under, and as defined in, the Pre-Petition Revolving Loan Agreement and the "Loan Documents" under, and as defined in, the Pre-Petition Term Loan Credit Agreement.

"Pre-Petition Letters of Credit" means the letters of credit issued and outstanding on the Closing Date under the Pre-Petition Credit Agreement (and listed on Schedule II hereto).

"Pre-Petition Loan Documents" has the meaning assigned to the term "Loan Documents" in the Pre-Petition Credit Agreement.

"Pre-Petition Lender" means the "Lenders" (including the L/C Issuer) under and as such terms are defined in the Pre-Petition Credit Agreement. "Pre-Petition Loans" means the aggregate "Revolving Loans", "Swing Loans" and "PIK Loans" (as each such term is defined in the Pre-Petition Credit Agreement) outstanding on the Petition Date.

"Pre-Petition Payments" means any payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Pre-Petition Indebtedness or other obligations or claims (including trade payables and payments in respect of reclamation claims) of the Borrower.

"Pre-Petition Term Revolving Loan Credit Agreement" means the ~~at Term Loan~~ certain Revolving Credit Agreement, dated as of March 3, 2008, among the Borrower, the persons party thereto as "Lenders" and the Pre-Petition RLA Agent, as amended by Amendment No. 1, dated as of March 16, 2009, and as further amended by Amendment No. 2, dated as of March 23, 2009, and as further amended by Amendment No. 3, dated as of April 9, 2009, but without giving effect to any other amendments, restatements, supplements or other modifications without the prior written consent of the Administrative Agent.

"Pre-Petition Revolving Obligations" means the "Obligations" under, and as defined in, the Pre-Petition Revolving Loan Agreement.

"Pre-Petition RLA Agent" means General Electric Capital Corporation, in its capacity as administrative agent under the Pre-Petition Revolving Loan Agreement.

"Pre-Petition RLA Priority Collateral" means the "Revolving Credit Priority Collateral" as defined in the Pre-Petition Intercreditor Agreement.

"Pre-Petition Secured Debt" means the Pre-Petition Revolving Obligations and the Pre-Petition Term Obligations.

"Pre-Petition Term Loan Agreement" shall mean that certain Credit Agreement dated as of the date hereof among the Borrower, the persons party thereto as "Lenders", and the Pre-Petition ~~TLA Agent~~, as amended by Amendment No. 1, dated as of June 4, 2008, as further amended by Amendment No. 2, dated as of March 16, 2009, as further amended by Amendment No. 3, dated as of March 23, 2009, and as further amended by Amendment No. 4, dated as of April 9, 2009 and Amendment No. 5, dated as of April 9, 2009, but without giving effect to any other amendments, restatements, supplements or other modifications without the prior written consent of the Administrative Agent.

"Pre-Petition Term Loan Documents" shall have the meaning specified for the term "Loan Documents" in the Pre-Petition Term Loan Agreement.

"Pre-Petition Term Obligations" shall mean all "Obligations" under and as defined in the Pre-Petition Term Loan Agreement.

"Pre-Petition TLA Agent" means General Electric Capital Corporation, in its capacity as administrative agent under the Pre-Petition Term Loan Agreement, together with its permitted successors and assigns.

"Pre-Petition TLA Priority Collateral" means the "Term Loan Priority Collateral" as defined in the Pre-Petition Intercreditor Agreement.

"Primed Liens" shall mean (a) the Liens that secured the obligations of the Borrower under the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents, and (b) ~~Unperfected Revolving Loan Priority Collateral Liens, (b) Unperfected Term Loan Priority Collateral Liens, (c) Liens on Prepetition RLA Priority Collateral, securing the Pre-Petition Term Obligations, and (d) any Liens to which any of such Liens are senior and (e) Unperfected Term Loan Priority Collateral Liens.~~ "Prior Administrative Agent" shall mean the "Administrative Agent" and "Collateral Agent" under and as such terms are defined in the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents, ~~including, without limitation, in their respective capacities as the holders of Liens created under the security documents and mortgages delivered pursuant to the Pre-Petition Credit Agreement.~~

"Prior Lender Replacement Lien" shall have the meaning assigned to it in the Interim Order or the Final Order, as applicable.

"Prior Lender Obligations" means the "Obligations" under and as such term is defined in the Pre-Petition Credit Agreement.

"Prior Lenders" means, collectively, the Lenders under (and as defined in) the Pre-Petition Credit Agreement.

"Pro Forma Balance Sheet" has the meaning specified in Section 4.4(e).

"Projections" means, collectively, the Initial Projections and any document delivered pursuant to Section 6.1(f).

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

"Pro Rata Outstandings", of any Lender at any time, means the sum of (i) the outstanding principal amount of Revolving Loans owing to such Lender and (ii) the amount of the participation of such Lender in the L/C Obligations outstanding with respect to all Letters of Credit.

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

subsequent assignment and any subsequent non-pro rata payments of any Lender pursuant to Section 2.18.2.2(c).

"Qualified Capital Stock" means Stock that is not Disqualified Stock.

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

"Related Documents" means, collectively, the Loan Documents and each other document executed with respect to any of the foregoing or any Related Transaction.

"Related Party" means:

(1) any controlling stockholder, 50% (or more) owned Subsidiary, or immediate family member (in the case of an individual) of Odyssey Investment Partners;

(2) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, stockholders, partners, members, owners or Persons beneficially holding a 50% or more controlling interest of which consist of Odyssey Investment Partners and/or such other Persons referred to in the immediately preceding clause (1); or

(3) any investment partnership or investment fund controlled or managed by Odyssey Investment Partners.

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

"Related Transactions" means, collectively, borrowing ~~the filing~~ of the Initial Loans on the Closing Date, ~~and the payments of contemplated to be made on the Closing Date by Section 7.9(i), (ii) the Pre-Petition Letters of Credit becoming Letters of Credit hereunder, and (iii) Chapter 11 Case, the initial~~ Borrowing of the Revolving Loans hereunder, and the payment of all related fees, costs and expenses associated with all of the foregoing and the execution and delivery of all the Related Documents.

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

"Remedial Action" means all actions required under Environmental Laws to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

~~"Rental Fleet"~~ means Eligible Inventory held for lease by the Borrower or any of its Domestic Subsidiaries or being leased by the Borrower or any of its Domestic Subsidiaries.

"Rentals" means rental payments due to the Borrower or any Domestic Subsidiary from the rental of Inventory owned by the Borrower or such Domestic Subsidiary.

"Required Lenders" means, at any time, Lenders having at such time in excess of 50% of the sum of the aggregate Commitments (or, if such Commitments are terminated, the sum of the amounts of the participations in Swing Loans, the principal amount of unparticipated portions of the Swing Loans and the Pro Rata Outstandings in the Revolving Credit Facility).

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

~~"Reserves"~~ means, with respect to the Borrowing Base (a) reserves established by the Administrative Agent from time to time against Eligible Accounts or Eligible Inventory, (b) reserves in the full amount of the Carve Out established by the Administrative Agent on the Closing Date and (c) such other reserves against Eligible Accounts, Eligible Inventory or Borrowing Availability that the Administrative Agent may, in its Permitted Discretion, establish from time to time. Without limiting the generality of the foregoing, Reserves established to ensure the payment of accrued interest expenses or Indebtedness shall be deemed to be within the Administrative Agent's Permitted Discretion. "Responsible Officer" means, with respect to any Person, any of the president, chief executive officer, treasurer, assistant treasurer, controller, managing member or general partner of such Person but, in any event, with respect to financial matters, any such officer that is responsible for preparing the Financial Statements delivered hereunder and, with respect to the Corporate Chart and other documents delivered pursuant to Section 6.1(e), documents delivered on the Closing Date and documents delivered pursuant to Section 7.10, the secretary or assistant secretary of such Person or any other officer responsible for maintaining the corporate and similar records of such Person.

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

"Restructuring" means (a) any and all arrangements made or proposed to be made with respect to the potential restructuring of Pre-Petition Indebtedness of the Borrower and/or reorganization of its and its Subsidiaries' business, operations, credit facilities, equity, and structure, (b) the negotiation, execution and delivery of this Agreement and Loan Documents, and (c) the Chapter 11 Case and emergence therefrom.

"Restructuring Costs" means non-recurring and other one-time costs incurred by the Borrower and its Subsidiaries on or after the Petition Date in connection with the Restructuring, including closing fees and legal, consulting and other advisor fees.

"Revolving Credit Facility" means the Commitments and the provisions herein related to the Revolving Loans, Swing Loans and Letters of Credit.

"Revolving Credit Outstandings" means, at any time, the sum of, in each case to the extent outstanding at such time, (a) the aggregate principal amount of the Revolving Loans and Swing Loans and (b) the L/C Obligations for all Letters of Credit. "Revolving Credit Priority Collateral" has the meaning specified for such term in the Pre-Petition Intercreditor Agreement and in any event, shall include (x) property of the type described as "Revolving Credit Priority Collateral" therein that is created or acquired by the Borrower after the Petition Date and (y) Unperfected Term Loan Priority Collateral.

"Revolving Loan" has the meaning specified in Section 2.1(b)-2.1.

"Revolving Superpriority Claims" has the meaning specified in Section 2.21.

"Roll-Over Letter of Credit" means a Pre-Petition Letter of Credit that is outstanding as of the Closing Date.

"S&P" means Standard & Poor's Rating Services.

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

"Satisfaction Date" means the date on which the events described in Section 10.10(b)(iii)(A), (B) and (C) occur.

"Scheduled Maturity Date" means April [], 2010.

"Secured Hedging Agreement" means any Hedging Agreement that (a) has been entered into with a Secured Hedging Counterparty, (b) in the case of a Hedging Agreement not entered into with or provided or arranged by the Administrative Agent or an Affiliate of the Administrative Agent, is expressly identified as being a "Secured Hedging Agreement" hereunder in a joint notice from the Borrower and such Person delivered to the Administrative Agent reasonably promptly after the execution of such Hedging Agreement and (c) meets the requirements of Section 8.1(f).

~~“Secured Hedging Counterparty” means (a) a Person who has entered into a Hedging Agreement with the Borrower if such Hedging Agreement was provided or arranged by the Administrative Agent or an Affiliate of the Administrative Agent, and any assignee of such Person or (b) a Lender or an Affiliate of a Lender who has entered into a Hedging Agreement with the Borrower (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of the Hedging Agreement).~~

~~“Secured Parties” means the Lenders, the L/C Issuers, the Administrative Agent, any Secured Hedging Counterparty, each other Indemnitee and any other holder of any Obligation of the Borrower.~~

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

“Security Agreement” means a security agreement, in substantially the form of Exhibit H, among the Administrative Agent, the Borrower and the Grantors from time to time party thereto, as the same may from time to time be amended, restated, supplemented or otherwise modified.

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

“Senior Subordinated Notes” means the “Notes” (as defined in the Senior Subordinated Notes Indenture) in an aggregate principal amount not exceeding \$155,000,000.

“Senior Subordinated Notes Indenture” means the Indenture, dated as of June 16, 2000 among the Borrower, the guarantors party thereto and United States Trust Company, as Trustee, relating to The Borrower’s 13% Senior Subordinated Notes due 2009, as supplemented through the Closing Date and as subsequently amended, modified or supplemented in accordance with its term and the terms of this Agreement.

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

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

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

“Subordinated Debt” means any Indebtedness that is subordinated to the payment in full of the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent, including any Indebtedness under the Senior Subordinated Notes.

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

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

"Supermajority Lenders" means ~~Lenders having (a) 80% or more of the Commitments of all Lenders, or (b) if the Commitments have been terminated, 80% or more of the aggregate outstanding amount of the Revolving Loan (with the Swing Loan being attributed to the Lender making such Loan).~~

"Successor Administrative Agent" means any successor Administrative Agent appointed pursuant to Section 10.9 which successor is not Affiliated with OCM POE IV DS Investments Ltd.

"Superpriority Claim" means a claim against Borrower in the Chapter 11 Case which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

"SWDA" means the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.).

"Swingline Commitment" means ~~\$10,000,000.~~

"Swingline Lender" means, ~~each in its capacity as Swingline Lender hereunder, GE Capital or, upon the resignation of GE Capital as Administrative Agent hereunder, any Lender (or Affiliate or Approved Fund of any Lender) that agrees, with the approval of the Administrative Agent (or, if there is no such successor Administrative Agent, the Required Lenders) and the Borrower, to act as the Swingline Lender hereunder.~~

"Swingline Request" has the meaning specified in Section 2.3(b).

"Swing Loan" has the meaning specified in Section 2.3(a).

"Tax Affiliate" means, (a) the Borrower and its Subsidiaries and (b) any Affiliate of the Borrower with which the Borrower files or is eligible to file consolidated, combined or unitary tax returns.

"Tax Return" has the meaning specified in Section 4.8.

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

"Termination Date" means the earliest of (a) the Scheduled Maturity Date, (b) the date of termination of Lenders' obligations to make Loans and to incur L/C Obligations or permit existing Loans to remain outstanding pursuant to Section 9.2, (c) the date of indefeasible prepayment in full by Borrowers of the Loans and the cancellation and return (or stand-by guarantee) of all Letters of Credit or the cash collateralization of all L/C Obligations pursuant to Section 9.3, and the permanent reduction of all Commitments to zero dollars (\$0), (d) the first date on which a Termination Event occurs and (e) the effective date of a plan of reorganization in the Chapter 11 Case.

"Termination Event" means the earliest to occur of the following:

(a) the date that is 35 days after entry of the Interim Order if the Final Order is not entered prior to the expiration of such 35-day period (or such longer period as may be agreed upon by the Administrative Agent in its sole discretion); and

~~(b) — Borrower's (i) failure within 45 days following the Petition Date to enter into a definitive lock-up, purchase or similar agreement (on terms acceptable to the Required Lenders in all respects) with a purchaser (acceptable in all respects to the Administrative Agent) for the purchase by such purchaser of Borrower in connection with a plan of reorganization that provides for payment in full in cash of the Obligations upon consummation thereof, and (ii) failure to file a motion (the "Bid Procedures Motion") to approve bid procedures for the sale of all or substantially all of assets of Borrower (which, to the extent agreed by the Administrative Agent, shall allow credit bids by one or more Lenders) within 45 days after the Petition Date, which motion shall be acceptable to the Administrative Agent in its sole and absolute discretion;~~

~~(c) — in the event that Borrower has not failed to comply with clause (b)(ii) of this definition, Borrower's (i) failure to obtain an order approving bid procedures for the sale of all or substantially all of the assets of the Borrower within 60 days of the Petition Date, which order shall be acceptable to the Administrative Agent in its sole and absolute discretion, (ii) failure to obtain an order approving the sale of all or substantially all of the assets of Borrower within 105 days after the Petition Date, which order shall be acceptable to the Administrative Agent in its sole and absolute discretion and shall result in payment in full in cash of the Obligations upon consummation of such sale, or (iii) failure to consummate such sale upon the approved terms within 120 days after the date of the Petition Date; provided that, prior to consummating such sale, the Borrower and applicable purchaser shall have agreed on (or the Bankruptcy Court has otherwise approved) a wind down budget for the Borrower for the period commencing after the applicable closing date; and~~

~~(b) (d) in the event that Borrower has not failed to comply with clause (b)(i) of this definition, Borrower's (i) failure to file a plan of reorganization and related disclosure statement with 's (i) failure to obtain the approval of the Bankruptcy Court within 90 to the Disclosure Statement within 120 days after the Petition Date that provides for payment in full in cash of the Obligations upon consummation thereof, (ii) failure to obtain the approval of the Bankruptcy Court to the disclosure statement and the authorization of the Court to solicit approval of the plan within 120 days after the Petition Date, (iii) obtain within 155, and (ii) obtain within 165 days after the Petition Date an order from the Bankruptcy Court confirming a plan of reorganization the Plan which provides for payment in full in cash of the Obligations upon consummation thereof or (iv) failure to consummate such plan of reorganization within 185 days after the Petition Date.~~

~~"Term Loan Priority Collateral" has the meaning specified in the Pre-Petition Intercreditor Agreement and, except as used in the definitions of "Unperfected Term Loan Priority Collateral" and "Perfected Term Loan Priority Collateral," shall not include Unperfected Term Loan Priority Collateral.~~

~~"Term Loan Priority Proceeds" has the meaning specified in Section 7.11.~~

~~"Test Period" has the meaning specified in Section 5.2.~~

~~"Title IV Plan" means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.~~

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

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

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

"Unencumbered Term Loan Assets" has the meaning specified in Section 2.12(e).

"United States" means the United States of America.

"Unperfected Term Revolving Loan Priority Collateral" means Term Loan Pre-Petition RLA Priority Collateral the Liens on which that were granted in favor of the "Administrative Agent" and/or "Collateral Agent" (as such terms are defined as of the Closing Date in the Pre-Petition Term Loan Credit Revolving Loan Agreement) are not Perfected Revolving Loan Priority Collateral Liens.

"Unperfected Term Loan Priority Collateral" means Pre-Petition TLA Priority Collateral the Liens on which that were granted in favor of the "Administrative Agent" and/or "Collateral Agent" (as such terms are defined as of the Closing Date in the Pre-Petition Term Loan Agreement) are not Perfected Term Loan Priority Collateral Liens.

"Unused Commitment Fee" has the meaning specified in Section 2.11(a).

"U.S. Lender Party" means each of the Administrative Agent, each Lender, each L/C Issuer, each SPV and each participant, in each case that is a Domestic Person.

"Voting Agreement" means any voting trust or similar agreement among current and/or former members of the management of Borrower and Odyssey Investment Partners and/or one or more of its Related Parties pursuant to which such current and/or former members of management grant Odyssey Investment Partners and/or its Related Parties the right to vote shares of Borrower's Stock.

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

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

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

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

Section 1.3 Accounting Terms and Principles. (a) GAAP.—All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any Financial Statement hereafter adopted by the Borrower shall be given effect if such change would affect a calculation that measures compliance with any provision of Article VIII unless the Borrower, the Administrative Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all Financial Statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP.

~~(b) Pro Forma. All components of financial calculations made to determine compliance with Article VIII shall be adjusted on a Pro Forma Basis to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any Pro Forma Transaction consummated after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by the Borrower based on assumptions expressed therein and that were reasonable based on the information available to the Borrower at the time of preparation of the Compliance Certificate setting forth such calculations.~~

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

Section 1.5 Interpretation. (a) Certain Terms. Except as set forth in any Loan Document, all accounting terms not specifically defined herein shall be construed in accordance with GAAP (except for the term "property", which shall be interpreted as broadly as possible, including, in any case, cash, Securities, other assets, rights under Contractual Obligations and Permits and any right or interest in any property). The terms "herein", "hereof" and similar terms refer to this Agreement as a whole. In the computation of periods of time from a specified date to a later specified date in any Loan Document, the terms "from" means "from and including" and the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including." In any other case, the term "including" when

used in any Loan Document means "including without limitation." The term "documents" means all writings, however evidenced and whether in physical or electronic form, including all documents, instruments, agreements, notices, demands, certificates, forms, financial statements, opinions and reports. The term "incur" means incur, create, make, issue, assume or otherwise become directly or indirectly liable in respect of or responsible for, in each case whether directly or indirectly, and the terms "incurrence" and "incurred" and similar derivatives shall have correlative meanings. All references to a time of day shall refer to such time of day in New York.

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

ARTICLE 2 THE REVOLVING CREDIT FACILITY

Section 2.1 The Commitments(a) — (a) Initial Loan Commitments. ~~On the terms and subject to the conditions contained in this Agreement, each Lender severally, but not jointly, agrees to make a loan (each an "Initial Loan") in Dollars to the Borrower on the Closing Date in an amount not to exceed such Lender's Initial Loan Commitment. Amounts of Initial Loans repaid may not be reborrowed. Each Lender's Initial Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the making of the Initial Loans hereunder. Proceeds of the Initial Loan shall be used on the Closing Date to satisfy in full in cash all Pre-Petition Loans (excluding, in any event, Pre-Petition Letters of Credit).~~ (b) Incremental Revolving Loan Commitments. ~~On the terms and subject to the conditions contained in this Agreement, each Lender severally, but not jointly, agrees to make loans in Dollars (each an "Incremental Revolving Loan" and together with the Initial Loan, collectively, the "Revolving Loans" a "Revolving Loan") to the Borrower from time to time on any Business Day during the period from the date hereof until the Termination Date in an aggregate principal amount at any time outstanding for all such loans by such Lender not to exceed such Lender's Incremental Revolving Loan Commitment; provided, however, that at no time shall any Lender be obligated to make an Incremental Revolving Loan if, after giving effect to the making of such Incremental Revolving Loan, (i) the Incremental Revolving Loan in excess of such Lender's Pro Rata Share of the amount by which then effective Commitments exceeds the aggregate Revolving Credit Outstandings would exceed Incremental Borrowing Availability or (ii) the Revolving Credit Outstandings would exceed Borrowing Availability plus the Permitted Overadvance Amount. Within the limits set forth in the first sentence of this clause (b), amounts of Incremental at such time and provided, further, the aggregate amount of the Revolving Loans shall not exceed the amount permitted at such time by the applicable Order or, until the entry of the Final Order, the amount set forth in the Approved Budget (as defined in the Interim Order).~~

Within the limits set forth in the first sentence of this Section 2.1, amounts of Revolving Loans repaid may be reborrowed under this Section 2.1.

(e) ~~Orders. Notwithstanding anything to the contrary contained herein, in no event shall any Lender or L/C Issuer be obligated to make any Loan or Issue any Letter of Credit in an amount exceeding that permitted at that time by the applicable Order.~~

(d) ~~[omitted]~~

Section 2.2 Borrowing Procedures. (a) **Notice From the Borrower.** Each Borrowing shall be made on notice given by the Borrower to the Administrative Agent not later than 1:00 p.m. (New York time) on (i) the first Business Day, in the case of a Borrowing of Base Rate Loans and (ii) the third Business Day, in the case of a Borrowing of Eurodollar Rate Loans, second Business Day prior to the date of the proposed Borrowing. Each such notice may be made in a writing substantially in the form of Exhibit C (a "Notice of Borrowing") duly completed or by telephone if confirmed promptly, but in any event within one Business Day and prior to such Borrowing, with such a Notice of Borrowing. Loans shall be made as Base Rate Loans unless, outside of a suspension period pursuant to Section 2.15, the Notice of Borrowing specifies that all or a portion thereof shall be Eurodollar Rate Loans. Each Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000.

(b) **Notice to Each Lender.** The Administrative Agent shall give to each Lender prompt notice of the Administrative Agent's receipt of a Notice of Borrowing and, if Eurodollar Rate Loans are properly requested in such Notice of Borrowing, prompt notice of the applicable interest rate. Each Lender shall, before 3:00 p.m. (New York time) on the date of the proposed Borrowing in the case of Base Rate Loans and before 1:00 p.m. (New York time) on the date of the proposed Borrowing in the case of Eurodollar Rate Loans, make available to the Administrative Agent at its address referred to in Section 11.11, such Lender's Pro Rata Share of such proposed Borrowing. Upon fulfillment or due waiver (i) on the Closing Date, of the applicable conditions set forth in Section 3.1 and (ii) on the Closing Date and any time thereafter, of the applicable conditions set forth in Section 3.2, the Administrative Agent shall make such funds available to the Borrower.

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

Administrative Agent, at the Federal Funds Rate for the first Business Day and thereafter (i) in the case of a payment in respect of a Loan, at the interest rate applicable at the time to such Loan and (ii) otherwise, at the interest rate applicable to Base Rate Loans under the Revolving Credit Facility the Loans. Such repayment shall then constitute the funding of the corresponding Loan (including any Loan deemed to have been made hereunder with such payment) or participation. The existence of any Non-Funding Lender shall not relieve any other Lender of its obligations under any Loan Document, but no other Lender shall be responsible for the failure of any Non-Funding Lender to make any payment required under any Loan Document.

Section 2.3 Swing Loans Intentionally Omitted. ~~(a) Availability.~~ On the terms and subject to the conditions contained in this Agreement, the Swingline Lender may, in its sole discretion, make loans in Dollars (each a "Swing Loan") available to the Borrower under the Revolving Credit Facility from time to time on any Business Day during the period from the date hereof until the Termination Date in an aggregate principal amount at any time outstanding not to exceed the lesser of (A) its Swingline Commitment and (B) Incremental Borrowing Availability; provided, however, that the Swingline Lender may not make any Swing Loan (x) in the period commencing on the first Business Day after it receives notice from the Administrative Agent or the Required Lenders that one or more of the conditions precedent contained in Section 3.2 are not satisfied and ending when such conditions are satisfied or duly waived, and (y) if, after giving effect to the making of such Swing Loan, (i) the Incremental Revolving Credit Outstandings would exceed Incremental Borrowing Availability or (ii) the Revolving Credit Outstandings would exceed Borrowing Availability plus the Permitted Overadvance Amount. In connection with the making of any Swing Loan, the Swingline Lender may but shall not be required to determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived. Each Swing Loan shall be a Base Rate Loan and must be repaid in full on the earliest of (i) the funding date of any Borrowing of Revolving Loans and (ii) the Termination Date. *Within the limits set forth in the first sentence of this clause (a),* amounts of Swing Loans repaid may be reborrowed under this clause (a).

~~(b) — Borrowing Procedures.~~ In order to request a Swing Loan, the Borrower shall give to the Administrative Agent a notice to be received not later than 1:00 p.m. (New York time) on the day of the proposed borrowing, which may be made in a writing substantially in the form of Exhibit D duly completed (a "Swingline Request") or by telephone if confirmed promptly but, in any event, prior to such borrowing, with such a Swingline Request. In addition, if any Notice of Borrowing requests a Borrowing of Base Rate Loans, the Swing Line Lender may, *notwithstanding anything else to the contrary in Section 2.2,* make a Swing Loan available to the Borrower in an aggregate amount not to exceed such proposed Borrowing, and the aggregate amount of the corresponding proposed Borrowing shall be reduced accordingly by the principal amount of such Swing Loan. The Administrative Agent shall promptly notify the Swingline Lender of the details of the requested Swing Loan. Upon receipt of such notice and subject to the terms of this Agreement, the Swingline Lender may make a Swing Loan available to the Borrower by making the proceeds thereof available to the Administrative Agent and, in turn, the Administrative Agent shall make such proceeds available to the Borrower on the date set forth in the relevant Swingline Request.

~~(c) — Refinancing Swing Loans.~~ The Swingline Lender may at any time forward a demand to the Administrative Agent (which the Administrative Agent shall, upon receipt, forward to each Lender) that each Lender pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Pro Rata Share of all or a portion of the outstanding Swing Loans. Each Lender shall pay such Pro Rata Share to the Administrative Agent for the account of the Swingline Lender. Upon receipt by the Administrative Agent of such payment, such Lender shall be deemed to have made an Incremental Revolving Loan to the Borrower, which, upon receipt of such payment by the Swingline Lender from the Administrative Agent, the Borrower shall be deemed to have used in whole to refinance such Swing Loan.

If any payment made by any Lender as a result of any such demand is not deemed an Incremental Revolving Loan, such payment shall be deemed a funding by such Lender of such participation. Such participation shall not be otherwise required to be funded. Upon receipt by the Swingline Lender of any payment from any Lender pursuant to this clause (c) with respect to any portion of any Swing Loan, the Swingline Lender shall promptly pay over to such Lender all payments of principal (to the extent received after such payment by such Lender) and interest (to the extent accrued with respect to periods after such payment) received by the Swingline Lender with respect to such portion.

(d) — Obligation to Fund Absolute. Each Lender's obligations pursuant to clause (c) above shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including (A) the existence of any setoff, claim, abatement, recoupment, defense or other right that such Lender, any Affiliate thereof or any other Person may have against the Swing Loan Lender, any other Secured Party or any other Person, (B) the failure of any condition precedent set forth in Section 3.2 to be satisfied or the failure of the Borrower to deliver any notice set forth in Section 2.2(a) (each of which requirements the Lenders hereby irrevocably waive) and (C) any adverse change in the condition (financial or otherwise) of the Borrower.

Section 2.4 Letters of Credit Intentionally Omitted. (a) — Commitment and Conditions. On the terms and subject to the conditions contained herein, each L/C Issuer agrees to Issue, at the request of the Borrower, in accordance with such L/C Issuer's usual and customary business practices, and for the account of the Borrower (or, as long as the Borrower remains responsible for the payment in full of all amounts drawn thereunder and related fees, costs and expenses, for the account of any Group Member), Letters of Credit (denominated in Dollars in a minimum amount of \$250,000 unless otherwise agreed by the applicable L/C Issuer) from time to time on any Business Day during the period from the Closing Date through the earlier of the Termination Date and 10 days prior to the Scheduled Maturity Date; provided, however, that such L/C Issuer shall not be under any obligation to Issue any Letter of Credit upon the occurrence of any of the following, after giving effect to such Issuance:

(i) — (A)(x) the Incremental Revolving Credit Outstandings would exceed Incremental Borrowing Availability or (y) the Revolving Credit Outstandings would exceed Borrowing Availability plus the Permitted Overadvance Amount or (B) the L/C Obligations for all Letters of Credit would exceed the L/C Sublimit;

(ii) — the expiration date of such Letter of Credit (A) is not a Business Day, (B) is more than 270 days after the date of Issuance thereof or (C) is later than 10 days prior to the Scheduled Maturity Date; or

(iii) — (A) any fee due in connection with, and on or prior to, such Issuance has not been paid, (B) such Letter of Credit is requested to be Issued in a form that is not acceptable to such L/C Issuer or (C) such L/C Issuer shall not have received, each in form and substance reasonably acceptable to it and duly executed by the Borrower (and, if such Letter of Credit is issued for the account of any other Group Member, such Group Member), the documents that such L/C Issuer generally uses in the ordinary course of its business for the Issuance of letters of credit of the type of such Letter of Credit (collectively, the "L/C Reimbursement Agreement").

For each such Issuance, the applicable L/C Issuer may, but shall not be required to, determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived in connection with the Issuance of any Letter of Credit; provided, however, that no Letter of Credit shall be Issued during

~~the period starting on the first Business Day after the receipt by such L/C Issuer of notice from the Administrative Agent or the Required Lenders that any condition precedent contained in Section 3.2 is not satisfied and ending on the date all such conditions are satisfied or duly waived.~~

~~All Roll Over Letters of Credit shall be deemed to have been Issued under this Agreement and shall constitute Letters of Credit as of the Closing Date.~~

~~(b) — Notice of Issuance. The Borrower shall give the relevant L/C Issuer and the Administrative Agent a notice of any requested Issuance of any Letter of Credit, which shall be effective only if received by such L/C Issuer and the Administrative Agent not later than 1:00 p.m. (New York time) on the third Business Day prior to the date of such requested Issuance. Such notice may be made in a writing substantially the form of Exhibit E duly completed or in a writing in any other form acceptable to such L/C Issuer (an "L/C Request") or by telephone if confirmed promptly, but in any event within one Business Day and prior to such Issuance, with such an L/C Request.~~

~~(e) — Reporting Obligations of L/C Issuers. Each L/C Issuer agrees to provide the Administrative Agent (which, after receipt, the Administrative Agent shall provide to each Lender), in form and substance satisfactory to the Administrative Agent, each of the following on the following dates: (i) on or prior to (A) any Issuance of any Letter of Credit by such L/C Issuer, (B) any drawing under any such Letter of Credit or (C) any payment (or failure to pay when due) by the Borrower of any related L/C Reimbursement Obligation, notice thereof, which shall contain a reasonably detailed description of such Issuance, drawing or payment, (ii) upon the request of the Administrative Agent (or any Lender through the Administrative Agent), copies of any Letter of Credit Issued by such L/C Issuer and any related L/C Reimbursement Agreement and such other documents and information as may reasonably be requested by the Administrative Agent and (iii) on the first Business Day of each calendar week, a schedule of the Letters of Credit Issued by such L/C Issuer, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the L/C Obligations for such Letters of Credit outstanding on the last Business Day of the previous calendar week.~~

~~(d) — Acquisition of Participations. Upon any Issuance of a Letter of Credit in accordance with the terms of this Agreement resulting in any increase in the L/C Obligations, each Lender shall be deemed to have acquired, without recourse or warranty, an undivided interest and participation in such Letter of Credit and the related L/C Obligations in an amount equal to such Lender's Pro Rata Share of such L/C Obligations.~~

~~(e) — Reimbursement Obligations of the Borrower. The Borrower agrees to pay to the L/C Issuer of any Letter of Credit each L/C Reimbursement Obligation owing with respect to such Letter of Credit no later than the first Business Day after the Borrower receives notice from such L/C Issuer that payment has been made under such Letter of Credit or that such L/C Reimbursement Obligation is otherwise due (the "L/C Reimbursement Date") with interest thereon computed as set forth in clause (i) below. In the event that any L/C Issuer incurs any L/C Reimbursement Obligation not repaid by the Borrower as provided in this clause (e) (or any such payment by the Borrower is rescinded or set aside for any reason), such L/C Issuer shall promptly notify the Administrative Agent of such failure (and, upon receipt of such notice, the Administrative Agent shall forward a copy to each Lender) and, irrespective of whether such notice is given, such L/C Reimbursement Obligation shall be payable on demand by the Borrower with interest thereon computed (i) from the date on which such L/C Reimbursement Obligation arose to the L/C Reimbursement Date, at the interest rate applicable during such period to Revolving Loans~~

that are Base Rate Loans and (ii) thereafter until payment in full, at the interest rate applicable during such period to past due Revolving Loans that are Base Rate Loans.

~~(f) — Reimbursement Obligations of the Lenders. Upon receipt of the notice described in clause (e) above from the Administrative Agent, each Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share of such L/C Reimbursement Obligation. By making such payment, such Lender shall be deemed to have made an Incremental Revolving Loan to the Borrower, which, upon receipt thereof by such L/C Issuer, the Borrower shall be deemed to have used in whole to repay such L/C Reimbursement Obligation. Any such payment that is not deemed an Incremental Revolving Loan shall be deemed a funding by such Lender of its participation in the applicable Letter of Credit and the related L/C Obligations. Such participation shall not otherwise be required to be funded. Upon receipt by any L/C Issuer of any payment from any Lender pursuant to this clause (f) with respect to any portion of any L/C Reimbursement Obligation, such L/C Issuer shall promptly pay over to such Lender all payments received after such payment by such L/C Issuer with respect to such portion.~~

~~(g) — Obligations Absolute. The obligations of the Borrower and the Lenders pursuant to clauses (d), (e) and (f) above shall be absolute, unconditional and irrevocable and performed strictly in accordance with the terms of this Agreement irrespective of (i) (A) the invalidity or unenforceability of any term or provision in any Letter of Credit, any document transferring or purporting to transfer a Letter of Credit, any Loan Document (including the sufficiency of any such instrument), or any modification to any provision of any of the foregoing, (B) any document presented under a Letter of Credit being forged, fraudulent, invalid, insufficient or inaccurate in any respect or failing to comply with the terms of such Letter of Credit or (C) any loss or delay, including in the transmission of any document, (ii) the existence of any setoff, claim, abatement, recoupment, defense or other right that any Person (including any Group Member) may have against the beneficiary of any Letter of Credit or any other Person, whether in connection with any Loan Document or any other Contractual Obligation or transaction, or the existence of any other withholding, abatement or reduction, (iii) in the case of the obligations of any Lender, (A) the failure of any condition precedent set forth in Section 3.2 to be satisfied (each of which conditions precedent the Lenders hereby irrevocably waive) or (B) any adverse change in the condition (financial or otherwise) of the Borrower and (iv) any other act or omission to act or delay of any kind of any Secured Party or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.4, constitute a legal or equitable discharge of any obligation of the Borrower or any Lender hereunder.~~

Section 2.5 Reduction and Termination of the Commitments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, ~~terminate~~ terminate in whole at any time and/or reduce in part ratably, from time to time, any unused portion of the Commitments; provided, however, that each partial reduction shall be in an aggregate amount that is an integral multiple of \$1,000,000.

(b) Mandatory. All outstanding ~~Incremental Revolving Loan~~ Commitments shall terminate on the Scheduled Maturity Date.

Section 2.6 Repayment of Loans. The Borrower promises to repay the entire unpaid principal amount of the Revolving Loans and the Swing Loans on the Scheduled Maturity Date.

Section 2.7 Optional Prepayments. The Borrower may prepay the outstanding principal amount of any Loan in whole at any time and/or in part, from time to time, without premium or penalty except that the Borrower will remain liable for any breakage costs that may be owing pursuant to Section 2.16(a) after giving effect to such prepayment; provided, however, that each partial prepayment that is not of the entire outstanding amount shall be in an aggregate amount that is an integral multiple of \$500,000.

Section 2.8 Mandatory Prepayments.

(a) ~~Prepayments from Issuance of Debt and Equity Issuances.~~ (i) Immediately upon the receipt by Borrower or any of its Subsidiaries of the proceeds of (x) the issuance of Stock (other than issuances permitted under Section 8.4(d)(ii)), or (y) the incurrence of Indebtedness by (other than Indebtedness permitted under Section 8.1), Borrower or such Subsidiary shall prepay the Loans in an amount equal to such proceeds, net of underwriting discounts and commissions and other reasonable, documented, out-of-pocket costs associated therewith. The payments shall be applied in accordance with Section 2.12. Intentionally Omitted.

(b) ~~{omitted}~~ Intentionally Omitted.

(c) Asset Sales and Property Loss Events. Upon receipt on or after the Closing Date by the Borrower or any of its Subsidiaries of Net Cash Proceeds arising from (i) any Sale by any Group Member of any Revolving Credit Priority Collateral property, other than Sales of property permitted hereunder in reliance upon any of clauses (a), (c) or (d) of Section 8.4 or (ii) any Property Loss Event with respect to any Revolving Credit Priority Collateral of any Group Member to the extent resulting, in the aggregate with all other such Property Loss Events, in the receipt by any of them of Net Cash Proceeds, in excess of \$100,000, the Borrower shall immediately promptly pay or cause to be paid to the Administrative Agent an amount equal to 100% of such Net Cash Proceeds; provided that, in each case, no mandatory prepayment shall be required with respect to any Net Cash Proceeds if (x) no Default or Event of Default has occurred and is continuing, (y) Net Cash Proceeds are reinvested in Inventory, Equipment, Fixtures or Real Estate within thirty (30) days following receipt thereof or such longer period as may be agreed to by the Administrative Agent and (z) Borrower notifies the Administrative Agent of its intent to reinvest such Net Cash Proceeds at the time such proceeds are received and when such reinvestment occurs.

(d) Excess Outstandings. On any date on which (i) the aggregate principal amount of Revolving Credit Outstandings exceeds (x) the aggregate Commitments or (y) the Borrowing Base plus the Permitted Overadvance Amount or (ii) the Incremental Borrowing Availability is less than zero, the Borrower shall pay to the Administrative Agent, in reduction of the principal amount of the Revolving Loans, an amount equal to such excess or the amount by which the Incremental Borrowing Availability is less than zero, as applicable. To the extent that any Incremental Revolving Loan or Swing Loan was made, or Letter of Credit was issued, in either case, in excess of Incremental Borrowing Availability, the Borrower shall immediately pay to the Administrative Agent in reduction of the principal amount of the Incremental Revolving Loans or Swing Loans an amount equal to such excess (or, if all Incremental Revolving Loans and Swing Loans have been paid, by providing cash collateral for Letters of Credit in an amount equal to such excess).

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

Section 2.9 Interest. (a) Rate. All Loans and the outstanding amount of all other Obligations (other than pursuant to Secured Hedging Agreements) shall bear interest, in the case of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in clause (c) below, as follows: (i) in the case of Base Rate Loans, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin, each as in effect from time to time, (ii) in the case of Eurodollar Rate Loans, at a rate per annum equal to the sum of the Eurodollar Rate and the Applicable Margin, each as in effect for the applicable Interest Period, and (iii) in the case of other Obligations, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin for Revolving Loans that are Base Rate Loans, each as in effect from time to time.

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

(c) Default Interest. Notwithstanding the rates of interest specified in clause (a) above or elsewhere in any Loan Document, effective immediately upon (A) the occurrence of any Event of Default under Section 9.1(a), or Section 9.1(d) or (B) the delivery of a notice by the Administrative Agent or the Required Lenders to the Borrower during the continuance of any other Event of Default and, in each case, for as long as such Event of Default shall be continuing, the principal balance of all Obligations (including any Obligation that bears interest by reference to the rate applicable to any other Obligation) then due and payable shall bear interest at a rate that is 2% per annum in excess of the interest rate applicable to such Obligations from time to time, payable on demand or, in the absence of demand, on the date that would otherwise be applicable.

Section 2.10 Conversion and Continuation Options ~~Intentionally Omitted.~~ (a) ~~Option.~~ The Borrower may elect (i) in the case of any Eurodollar Rate Loan, (A) to continue such Eurodollar Rate Loan or any portion thereof for an additional Interest Period on the last day of the Interest Period applicable thereto and (B) to convert such Eurodollar Rate Loan or any portion thereof into a Base Rate Loan at any time on any Business Day, subject to the payment of any breakage costs required by Section 2.16(a), and (ii) in the case of Base Rate Loans (other than Swing Loans), to convert such Base Rate Loans or any portion thereof into Eurodollar Rate Loans at any time on any Business Day upon 3 Business Days' prior notice; ~~provided, however, that, (x) for each Interest Period, the aggregate amount of Eurodollar Rate Loans having such Interest Period must be an integral multiple of \$1,000,000 and (y) no conversion in whole or in part of Base Rate Loans to Eurodollar Rate Loans and no continuation in whole or in part of Eurodollar Rate Loans shall be permitted at any time at which (1) an Event of Default shall be continuing and the Administrative Agent or the Required Lenders shall have determined in their sole discretion not to permit such conversions or continuations or (2) such continuation or conversion would be made during a suspension imposed by Section 2.15.~~

(b) ~~Procedure.~~ Each such election shall be made by giving the Administrative Agent at least 3 Business Days' prior notice in substantially the form of Exhibit F (a "Notice of Conversion or Continuation") duly completed. The Administrative Agent shall promptly notify each Lender of its receipt of a Notice of Conversion or Continuation and of the options selected therein. If the Administrative Agent does not receive a timely Notice of Conversion or Continuation from the Borrower containing a permitted

election to continue or convert any Eurodollar Rate Loan, then, upon the expiration of the applicable Interest Period, such Loan shall be automatically converted to a Base Rate Loan. Each partial conversion or continuation shall be allocated ratably among the Lenders in accordance with their Pro Rata Share.

Section 2.11 Fees. (a) **Unused Commitment Fee.** The Borrower agrees to pay to each Lender a commitment fee on the actual daily amount by which the Commitment of such Lender exceeds its Pro Rata Share of the sum of (i) the aggregate outstanding principal amount of Revolving Loans and (ii) the outstanding amount of the L/C Obligations for all Letters of Credit (the "Unused Commitment Fee") from the date hereof through the Termination Date at a rate per annum equal to ~~1.000~~1.375%, payable in arrears (x) on the last day of each calendar month and (y) on the Termination Date.

(b) **Letter of Credit Fees.** The Borrower agrees to pay, with respect to all Letters of Credit issued by any L/C Issuer, (i) to such L/C Issuer, certain fees, documentary and processing charges as separately agreed between the Borrower and such L/C Issuer or otherwise in accordance with such L/C Issuer's standard schedule in effect at the time of determination thereof and (ii) to the Administrative Agent, for the benefit of the Lenders according to their Pro Rata Shares, a fee accruing at a rate per annum equal to the Applicable Margin for Revolving Loans that are Eurodollar Rate Loans on the maximum undrawn face amount of such Letters of Credit, payable in arrears (A) on the last day of each calendar month, ending after the issuance of such Letter of Credit and (B) on the Termination Date; ~~provided, however, that the fee payable under this clause (ii) shall be increased by 2% per annum and shall be payable, in addition to being payable on any date it is otherwise required to be paid hereunder, on demand effective immediately upon (x) the occurrence of any Event of Default under Section 9.1(a) or Section 9.1(d) or (y) the delivery of a notice by the Administrative Agent or the Required Lenders to the Borrower during the continuance of any other Event of Default and, in each case, for as long as such Event of Default shall be continuing.~~ **Commitment and Funding Fees.** **On the date hereof, the Borrower agrees to pay a front-end purchase price adjustment to the Administrative Agent, for the ratable benefit of the Lenders, in an amount equal to 1.50% of the aggregate Commitments. On the Closing Date, the Borrower agrees to pay an additional front-end purchase price adjustment to the Administrative Agent, for the ratable benefit of the Lenders, in an amount equal to 1.50% of the aggregate Commitments permitted to be funded pursuant to the Interim Order, and on the first date on or after the entry of the Final Order on which Borrowings are made, the Borrower agrees to pay an additional front-end purchase price adjustment to the Administrative Agent, for the ratable benefit of the Lenders, in an amount equal to 1.50% of an amount equal to (x) the aggregate Commitments permitted to be funded pursuant to the Final Order less (y) the aggregate Commitments permitted to be funded pursuant to the Interim Order.**

(c) **Additional Fees.** The Borrower shall pay to the Administrative Agent and its Related Persons its reasonable and customary fees and expenses in connection with any payments made pursuant to Section 2.16(a) (Breakage Costs) and has agreed to pay the additional fees described in the Fee Letter. **Administrative Fee.** **The Borrower shall pay to any Successor Administrative Agent an annual administrative fee of \$150,000, payable quarterly in advance, without duplication, beginning on the first Business Day on which such Successor Administrative Agent serves as the Administrative Agent.**

(d) **Expense Deposit.** **On the Closing Date, the Borrower shall pay to the Administrative Agent an expense deposit in the amount of \$1,000,000, to be applied by the Administrative Agent to all expenses payable by the Borrower to the Administrative Agent and the Lenders hereunder, which may be applied by the Administrative Agent to any Obligations.**

Section 2.12 Application of Payments. (a) Application of Voluntary Prepayments. Unless otherwise provided in this Section 2.12 or elsewhere in any Loan Document, all payments and any other amounts received by the Administrative Agent from or for the benefit of the Borrower shall be applied to repay the Obligations the Borrower designates.

(b) Application of Mandatory Prepayments. Subject to the provisions of clause (c) below with respect to the application of payments during the continuance of an Event of Default, any payment made by the Borrower to the Administrative Agent pursuant to Section 2.8(a) or 2.8(c) or any other prepayment of the Obligations required to be applied in accordance with this clause (b) shall be applied first, to repay the outstanding principal balance of the Initial Loans until paid in full, then to Swing Loans, until paid in full, and then to Incremental Revolving Loans, second, to provide cash collateral to the extent and in the manner in Section 9.3; and, then, except to the extent required to pay other Indebtedness of the Borrower, any other Obligations then due and payable; and, then, any excess shall be retained by the Borrower. Subject to the provisions of clause (c) below with respect to the application of payments during the continuance of an Event of Default, any payment made by the Borrower to the Administrative Agent pursuant to Section 2.8(d) shall be applied to Incremental Loans or Swing Loans or to cash collateralize L/C Obligations in respect of Letters of Credit as provided in such Section 2.8(d).

(c) Application of Payments During an Event of Default. The Borrower hereby irrevocably waives, and agrees to cause each other Group Member to waive, the right to direct the application during the continuance of an Event of Default of any and all payments in respect of any Obligation and any proceeds of Collateral and agrees that, notwithstanding the provisions of clause (a) above, the Administrative Agent may, and, upon either (A) the direction of the Required Lenders or (B) the termination of any Commitment or the acceleration of any Obligation pursuant to Section 9.2, shall, apply all payments in respect of any Obligation, all funds on any unused portion of the expense deposit in any Cash Collateral Account paid hereunder and all other proceeds of Collateral (i) first, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Administrative Agent, (ii) second, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Lenders and the L/C Issuers, (iii) third, to pay interest then due and payable in respect of the Loans and L/C Reimbursement Obligations, (iv) fourth, to repay the outstanding principal amounts of the Loans and L/C Reimbursement Obligations, to provide cash collateral for Letters of Credit in the manner and to the extent described in Section 9.3 and (v) fifth, to the ratable payment of all other Obligations.

(d) Application of Payments Generally. All payments that would otherwise be allocated to the Lenders pursuant to this Section 2.12 (other than any payment to be allocated to the Initial Loan) shall instead be allocated first, to repay interest on Swing Loans or any L/C Reimbursement Obligation, in each case any portion of the Revolving Loans that the Administrative Agent may have advanced on behalf of any Lender for which the Administrative Agent or, as the case may be, the L/C Issuer has not then been reimbursed by such Lender or the Borrower, second to pay the outstanding principal amount of the foregoing obligations and third, to repay the Revolving Loans. All repayments of any Revolving Loans shall be applied first, to repay such Loans outstanding as Base Rate Loans and then, to repay such Loans outstanding as Eurodollar Rate Loans, with those Eurodollar Rate Loans having earlier expiring Interest Periods being repaid prior to those having later expiring Interest Periods; provided that, unless otherwise elected by the Borrower, the Borrowing of Revolving Loans on the Closing Date in the amount identified by the Borrower in its initial Notice of Borrowing and classified by the Borrower as "Refinancing Indebtedness" under the Senior Subordinated Notes Indenture shall be paid after all other Revolving Loans. If sufficient amounts are not available to repay all outstanding Obligations described in any priority level set forth in this Section 2.12, the available amounts shall be applied, unless otherwise

expressly specified herein, to such Obligations ratably based on the proportion of the Secured Parties' interest in such Obligations. Any priority level set forth in this Section 2.12 that includes interest shall include all such interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding.

(e) — In the event that (i) the Obligations are secured by Term Loan Priority Collateral (as such term is defined in the Intercreditor Agreement) that, as of the date of the commencement of the Chapter 11 Case, is not subject to an Existing Lien held by the Term Loan Agent (as such term is defined in the Intercreditor Agreement) in its capacity as such ("Unencumbered Term Loan Assets"), and (ii) the Obligations are paid in full in cash pursuant to a plan of reorganization or pursuant to a sale of assets that includes Unencumbered Term Loan Assets under section 363 of the Bankruptcy Code, the proceeds of the Unencumbered Term Loan Assets shall be deemed applied to the Obligations prior to the proceeds of liens in other property securing the Obligations.

Section 2.13 and Computations Payments(a) : ~~(a) Procedure. The Borrower shall make each payment under any Loan Document not later than 2:00 p.m. (New York time) on the day when due to the Administrative Agent by wire transfer to the following account (or at such other account or by such other means to such other address as the Administrative Agent shall have notified the Borrower in writing within a reasonable time prior to such payment) in immediately available Dollars and without setoff or counterclaim:~~

ABA No. 021 001 033

Account Number 502 797 91

Deutsche Bank Trust Company Americas, New York, New York

Account Name: GECC/CAF Depository,

Reference: CFN [8845] GE Capital Re Dayton Superior Corporation

Debtor in Possession Revolving Credit Agreement, (a) Procedure. The Borrower shall make each payment under any Loan Document not later than 2:00 p.m. (New York time) on the day when due to the Administrative Agent by wire transfer to the account identified to Borrower in writing prior to the Closing Date (or at such other account or by such other means to such other address as the Administrative Agent shall have notified the Borrower in writing within a reasonable time prior to such payment) in immediately available Dollars and without setoff or counterclaim. The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in Section 2.12. The Lenders shall make any payment under any Loan Document in immediately available Dollars and without setoff or counterclaim. Each Lender shall make each payment for the account of any L/C Issuer or Swingline Lender required pursuant to Section 2.3 or 2.4 prior to 3:00 p.m. (New York time) on the Business Day immediately succeeding the Business Day on which demand or notice, as applicable, has been given to such Lender. Payments received by the Administrative Agent after 3:00 p.m. (New York time) shall be deemed to be received on the next Business Day.

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

Eurodollar Rate or Base Rate in accordance with the definitions of "Eurodollar Rate" and "Base Rate", respectively) and shall be conclusive, binding and final for all purposes, absent manifest error.

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

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

Section 2.14 Evidence of Debt. (a) Records of Lenders. Each Lender shall maintain in accordance with its usual practice accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. In addition, each Lender having sold a participation in any of its Obligations or having identified an SPV as such to the Administrative Agent, acting as agent of the Borrower solely for this purpose and solely for tax purposes, shall establish and maintain at its address referred to in Section 11.11 (or at such other address as such Lender shall notify the Borrower) a record of ownership, in which such Lender shall register by book entry (A) the name and address of each such participant and SPV (and each change thereto, whether by assignment or otherwise) and (B) the rights, interest or obligation of each such participant and SPV in any Obligation, in any Commitment and in any right to receive any payment hereunder.

(b) Records of the Administrative Agent. The Administrative Agent, acting as agent of the Borrower solely for tax purposes and solely with respect to the actions described in this Section 2.14, shall establish and maintain at its address referred to in Section 11.11 (or at such other address as the Administrative Agent may notify the Borrower) (A) a record of ownership (the "Register") in which the Administrative Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of the Administrative Agent, and each Lender and each L/C Issuer in the Revolving Credit Outstandings, each of their obligations under this Agreement to participate in each Loan, Letter of Credit and L/C Reimbursement Obligation, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses of the Lenders and the L/C Issuers (and each change thereto pursuant to Section 2.18 (Substitution of Lenders) and Section 11.2 (Assignments and Participations; Binding Effect)), (2) the Commitments of each Lender, (3) the amount of each Loan and, each funding of any participation described in clause (A) above, for Eurodollar Rate Loans, and the Interest Period applicable thereto, (4) the amount of any principal or interest due and payable or paid, and (5) the amount of the L/C Reimbursement Obligations due and payable or paid and (6) any other payment received by the Administrative Agent from the Borrower and its application to the Obligations.

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

(d) Prima Facie Evidence. The entries made in the Register and in the accounts maintained pursuant to clauses (a) and (b) above shall, to the extent permitted by applicable Requirements of Law, be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, however, that no error in such account and no failure of any Lender or the Administrative Agent to maintain any such account shall affect the obligations of the Borrower to repay the Loans in accordance with their terms. In addition, the Borrower, the Administrative Agent, and the Lenders and the L/C Issuers shall treat each Person whose name is recorded in the Register as a Lender or L/C Issuer, as applicable, for all purposes of this Agreement. Information contained in the Register with respect to any Lender or any L/C Issuer shall be available for access by the Borrower, the Administrative Agent, such Lender or such L/C Issuer at any reasonable time and from time to time upon reasonable prior notice. No Lender or L/C Issuer shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender or L/C Issuer unless otherwise agreed by the Administrative Agent.

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

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

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

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

(c) Effect of Suspension. If the obligation of any Lender to make or to continue Eurodollar Rate Loans is suspended, (A) the obligation of such Lender to convert Base Rate Loans into Eurodollar Rate Loans shall be suspended, (B) such Lender shall make a Base Rate Loan at any time such Lender would otherwise be obligated to make a Eurodollar Rate Loan, (C) the Borrower may revoke any pending Notice of Borrowing or Notice of Conversion or Continuation to make or continue any Eurodollar Rate Loan or to convert any Base Rate Loan into a Eurodollar Rate Loan and (D) each Eurodollar Rate Loan of such Lender shall automatically and immediately (or, in the case of any suspension pursuant to clause (a) above, on the last day of the current Interest Period thereof) be converted into a Base Rate Loan. Effect of Suspension. If the obligation of any Lender to make or to continue Loans is suspended, upon receipt of notice thereof from any Lender, the Administrative Agent shall notify the Borrower of such event, and the Administrative Agent shall establish an alternate rate of interest reflecting the Lenders' average cost of capital; provided that, notwithstanding the foregoing, if the Administrative Agent or the Borrower so requires, the Administrative Agent and the Borrower shall enter into negotiations for a period of not more than ten (10) days with a view to agreeing a substitute basis for determining such alternate rate of interest and any agreed substitute basis shall, with the prior consent of all the Lenders and the Borrower, be binding on all parties. The rate that is the greater of (i) 3.0% and (ii) such alternate rate shall be used in the stead of each reference to "Eurodollar Rate" in each Loan Document (for example, the applicable interest rate on all Loans shall be (a) the greater of 3.0% and the alternate rate plus (b) the Applicable Margin).

Section 2.16 Breakage Costs; Increased Costs; Capital Requirements. (a) Breakage Costs. The Borrower shall compensate each Lender, upon demand from such Lender to the Borrower (with copy to the Administrative Agent), for all Liabilities (including, in each case, those incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to prepare to fund, to fund or to maintain the Eurodollar Rate Loans of such Lender to the Borrower but excluding any loss of the Applicable Margin on the relevant Loans) that such Lender may incur (A) to the extent, for any reason other than solely by reason of such Lender being a Non-Funding Lender, a proposed Borrowing, conversion into or continuation of Eurodollar Rate Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Conversion or Continuation or in a similar request made by telephone by the Borrower, or (B) to the extent any Eurodollar Rate Loan is paid (whether through a scheduled, optional or mandatory prepayment) or converted to a Base Rate Loan (including because of Section 2.15) on a date that is not the last day of the applicable Interest Period or (C) as a consequence of any failure by the Borrower to repay Eurodollar Rate Loans when required by the terms hereof or when notified by the Borrower hereunder. For purposes of this clause (a), each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it using a matching deposit or other borrowing in the London interbank market.

(b) Increased Costs. If at any time any Lender or L/C Issuer determines that, after the date hereof, the adoption of, or any change in or in the interpretation, application or administration of, or compliance with, any Requirement of Law (other than any imposition or increase of Eurodollar Reserve

Requirements) from any Governmental Authority shall have the effect of (i) increasing the cost to such Lender of making, funding or maintaining any Eurodollar Rate Loan or to agree to do so or of participating, or agreeing to participate, in extensions of credit, or (ii) ~~increasing the cost to such L/C Issuer of Issuing or maintaining any Letter of Credit or of agreeing to do so or~~ (iii) imposing any other cost to such Lender ~~or L/C Issuer~~ with respect to compliance with its obligations under any Loan Document, then, upon demand by such Lender ~~or L/C Issuer~~ (with copy to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender ~~or L/C Issuer~~ amounts sufficient to compensate such Lender ~~or L/C Issuer~~ for such increased cost; provided, however, that this Section 2.16(b) shall not apply to any increase in or imposition of any taxes which shall be governed by Section 2.17.

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

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

Section 2.17 Taxes. (a) Payments Free and Clear of Taxes. Except as otherwise provided in this Section 2.17, each payment by the Borrower under any Loan Document shall be made free and clear of and without deduction for all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (and without deduction for any of them) (collectively, the "Taxes") other than for (i) taxes measured by net income (including branch profits taxes) and franchise taxes imposed in lieu of net income taxes, in each case imposed on any Secured Party as a result of a present or former connection between such Secured Party and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any Secured Party having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document) or (ii) taxes that are directly attributable to the failure (other than as a result of a change in any Requirement of Law) by any Secured Party to deliver the documentation required to be delivered pursuant to clause (f) below (all such non-excluded taxes, "Non-Excluded Taxes").

(b) Gross-Up. If any Taxes shall be required by law to be deducted from or in respect of any amount payable under any Loan Document ~~(other than any Secured Hedging Agreement)~~ to any

Secured Party (i) in the case of Non-Excluded Taxes, such amount shall be increased as necessary to ensure that, after all required deductions for Non-Excluded Taxes are made (including deductions of Non-Excluded Taxes applicable to any increases to any amount under this Section 2.17), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the Borrower shall make deductions for all relevant Taxes, (iii) the Borrower shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, the Borrower shall deliver to the Administrative Agent an original or certified copy of a receipt evidencing such payment or, if a receipt is not available, other evidence of payment reasonably satisfactory to the Administrative Agent in the Administrative Agent's sole discretion; provided, however, that no such increase shall be made with respect to, and the Borrower shall not be required to indemnify any such Secured Party pursuant to clause (d) below for, withholding taxes to the extent that the obligation to withhold amounts existed on the date that such Secured Party became a "Secured Party" under this Agreement in the capacity under which such Secured Party makes a claim under this clause (b), except in each case to the extent such Secured Party is a direct or indirect assignee ~~(other than pursuant to Section 2.18 (Substitution of Lenders))~~ of any other Secured Party that was entitled, at the time the assignment of such other Secured Party became effective, to receive additional amounts under this clause (b).

(c) Other Taxes. In addition, the Borrower agrees to pay, and authorizes the Administrative Agent to pay in its name, any stamp, documentary, excise or property tax, charges or similar levies imposed by any applicable Requirement of Law or Governmental Authority and all Liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, "Other Taxes"). ~~The Swingline Lender may, without any need for notice, demand or consent from the Borrower, by making funds available to the Administrative Agent in the amount equal to any such payment, make a Swing Loan to the Borrower in such amount, the proceeds of which shall be used by the Administrative Agent in whole to make such payment.~~ Within 30 days after the date of any payment of Taxes or Other Taxes by the Borrower pursuant to this Section 2.17, the Borrower shall furnish to the Administrative Agent, at its address referred to in Section 11.11, the original or a certified copy of a receipt evidencing payment thereof or, if a receipt is not available, other evidence of payment reasonably acceptable to the Administrative Agent in the Administrative Agent's sole discretion.

(d) Indemnification. The Borrower shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to the Administrative Agent), each Secured Party for all Non-Excluded Taxes and Other Taxes (including any such Non-Excluded Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.17) paid by such Secured Party and any Liabilities arising therefrom or with respect thereto (other than any taxes referred to in clauses (i) and (ii) of Section 2.17(a)), whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally asserted. A certificate of the Secured Party (or of the Administrative Agent on behalf of such Secured Party) claiming any compensation under this clause (d), setting forth a calculation of the amounts to be paid thereunder and delivered to the Borrower with a copy to the Administrative Agent, shall be conclusive, binding and final for all purposes, absent manifest error.

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

(f) Tax Forms. (i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States withholding tax or is subject to such withholding tax at a reduced rate under an applicable tax treaty, shall (w) on or prior to the date such Non-U.S. Lender Party becomes a "Non-U.S. Lender Party" hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by the Borrower or the Administrative Agent (or, in the case of a participant or SPV, the relevant Lender), provide the Administrative Agent and the Borrower (or, in the case of a participant or SPV, the relevant Lender) with two properly completed and duly executed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business), W-8BEN (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty) and/or W-8IMY (together with any required accompanying forms) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to the Administrative Agent that such Non-U.S. Lender Party is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-U.S. Lender Party under the Loan Documents. Unless the Borrower and the Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding tax, the Borrower and the Administrative Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate or at a reduced rate under an applicable tax treaty.

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

(ii) Each Lender having sold a participation in any of its Obligations or identified an SPV as such to the Administrative Agent shall collect from such participant or SPV the documents described in this clause (f) and provide them, along with two properly completed and duly executed originals of Form W-8IMY to the Administrative Agent.

Section 2.18 Substitution of Lenders. (a) Substitution Right. In the event that any Lender that is not an Affiliate of the Administrative Agent (an "Affected Lender"), (i) makes a claim under clause (b) (Increased Costs) or (c) (Increased Capital Requirements) of Section 2.16, (ii) notifies the Borrower pursuant to Section 2.15(b) (Illegality) that it becomes illegal for such Lender to continue to fund or make any Eurodollar Rate Loan, (iii) makes a claim for payment pursuant to Section 2.17(b) or (d) (Taxes), (iv) becomes a Non-Funding Lender or (v) does not consent to any amendment, waiver or consent

to any Loan Document for which the consent of the Required Lenders is obtained but that requires the consent of other Lenders, the Borrower may either pay in full such Affected Lender with respect to amounts due with the consent of the Administrative Agent or substitute for such Affected Lender any Lender or any Affiliate or Approved Fund of any Lender or any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent (in each case, a "Substitute Lender").

(b) Procedure. To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender, the Borrower shall deliver a notice to the Administrative Agent and such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery to the Administrative Agent by the Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender (including those that will be owed because of such payment), (ii) in the case of a payment in full of the Obligations owing to such Affected Lender, payment of any amount that, after giving effect to the termination of the Commitment of such Affected Lender, is required to be paid pursuant to Section 2.8(d) (Excess Outstandings) and (iii) in the case of a substitution, (A) payment of the assignment fee set forth in Section 11.2(c) and (B) an assumption agreement in form and substance reasonably satisfactory to the Administrative Agent whereby the Substitute Lender shall, among other things, agree to be bound by the terms of the Loan Documents and assume the Commitment of the Affected Lender.

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

~~Section 2.19 — Eligible Accounts. All of the Accounts owned by the Borrower or any of its Domestic Subsidiaries and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Administrative Agent shall be "Eligible Accounts" for purposes of this Agreement, except any Account to which any of the exclusionary criteria set forth below applies. The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Accounts from time to time in its Permitted Discretion. In addition, the Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the criteria set forth below, to establish new criteria and to adjust advance rates with respect to Eligible Accounts, in its Permitted Discretion exercised in good faith, subject to the approval of Supermajority Lenders in the case of adjustments, new criteria or changes in advance rates which have the effect of making more credit available. Eligible Accounts shall not include any Account of the Borrower or its Domestic Subsidiaries:~~

~~(a) — that does not arise from the sale of goods or the performance of services by the Borrower or a Domestic Subsidiary in the ordinary course of its business;~~

~~(b) — (i) upon which the Borrower's or a Domestic Subsidiary's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever or (ii) as to which the Borrower or such Domestic Subsidiary is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process, or (iii) if the Account represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor's obligation to pay that invoice is subject to the Borrower's or a Domestic Subsidiary's completion of further performance under such contract or is subject to the equitable Lien of a surety bond issuer;~~

~~(e) — to the extent that any defense, counterclaim, setoff or dispute is asserted as to such Account;~~

~~(d) — that is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for merchandise sold to or services rendered and accepted by the applicable Account Debtor;~~

~~(e) — with respect to which an invoice has not been sent to the applicable Account Debtor;~~

~~(f) — that (i) is not owned by the Borrower or a Domestic Subsidiary or (ii) is subject to any right, claim, security interest or other interest of any other Person, other than Permitted Liens that are junior to the Lien of the Administrative Agent securing the Obligations);~~

~~(g) — that arises from a sale to the Borrower, director, officer, other employee or Affiliate of the Borrower, or to any entity that has any common officer or director with the Borrower;~~

~~(h) — that is the obligation of an Account Debtor that is the United States government or a political subdivision thereof, or any state, county or municipality or department, agency or instrumentality thereof to the extent such obligations in the aggregate exceed \$2,500,000 unless the Administrative Agent, in its sole discretion, has agreed to the contrary in writing and the Borrower or the applicable Domestic Subsidiary, if necessary or desirable, has complied with respect to such obligation with the Federal Assignment of Claims Act of 1940, or any applicable state, county or municipal law restricting the assignment thereof with respect to such obligation;~~

~~(i) — that is the obligation of an Account Debtor located in a foreign country other than Canada unless payment thereof is assured by a letter of credit assigned and delivered to the Administrative Agent, satisfactory to the Administrative Agent as to form, amount and issuer;~~

~~(j) — to the extent the Borrower or any Subsidiary thereof is liable for goods sold or services rendered by the applicable Account Debtor to the Borrower or any Subsidiary thereof but only to the extent of the potential offset;~~

~~(k) — that arises with respect to goods that are delivered on a bill-and-hold, cash-on-delivery basis or placed on consignment, guaranteed sale or other terms by reason of which the payment by the Account Debtor is or may be conditional;~~

~~(l) — that is in default; provided, that, without limiting the generality of the foregoing, an Account shall be deemed in default upon the occurrence of any of the following:~~

(i) ~~the Account has not been paid and there has elapsed 120 (but not more than 150) days since its invoice date and the Account is not otherwise ineligible; (y) the Account has not been paid and there has elapsed more than 150 days since its invoice date; or (z) the Account has not been paid and there has elapsed more than 90 days since its due date and it is not an Account taken into account under clause (y);~~

(ii) ~~the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due; or~~

(iii) ~~a petition is filed by or against any Account Debtor obligated upon such Account under any bankruptcy law or any other federal, state or foreign (including any provincial) receivership, insolvency relief or other law or laws for the relief of debtors;~~

(m) ~~that is the obligation of an Account Debtor if 50% or more of the Dollar amount of all Accounts owing by that Account Debtor are ineligible under the other criteria set forth in paragraph (l) of this Section 2.19;~~

(n) ~~as to which the Administrative Agent's Lien thereon, on behalf of itself and Lenders, is not a first priority perfected Lien;~~

(o) ~~as to which any of the representations or warranties in the Loan Documents are untrue;~~

(p) ~~to the extent such Account is evidenced by a judgment, Instrument or, except in the case of a Rental, Chattel Paper;~~

(q) ~~to the extent that such Account, together with all other Accounts owing by such Account Debtor and its Affiliates as of any date of determination exceed 10% of all Eligible Accounts, except as otherwise agreed by the Administrative Agent;~~

(r) ~~that is payable in any currency other than Dollars;~~

(s) ~~in the case of any Rental, is not subject to a written lease agreement; or~~

(t) ~~in the case of any Rental, is not subject to a first priority security interest of the Administrative Agent on behalf of Lenders, perfected by possession of all Chattel Paper related to such Rental by possession or by the filing of a financing statement, which financing statement indicates that a purchase of or security interest in such chattel paper by or in favor of any Person other than the Administrative Agent is violative of the rights of the Administrative Agent.~~

Section 2.20 — Eligible Inventory. All of the Inventory owned by the Borrower or any of its Domestic Subsidiaries and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Administrative Agent shall be "Eligible Inventory" for purposes of this Agreement, except any Inventory to which any of the exclusionary criteria set forth below applies. The Administrative Agent shall have the right to establish, modify, or eliminate Reserves against Eligible Inventory from time to time in its Permitted Discretion. In addition, the Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the criteria set forth below, to establish new criteria and

to adjust advance rates with respect to Eligible Inventory in its Permitted Discretion exercised in good faith, subject to the approval of Supermajority Lenders in the case of adjustments, new criteria or changes in advance rates which have the effect of making more credit available. Eligible Inventory shall not include any Inventory of the Borrower or a Domestic Subsidiary that:

(a) — is not owned by the Borrower or a Domestic Subsidiary free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure the Borrower's or a Domestic Subsidiary's performance with respect to that Inventory), except the Liens in favor of the Administrative Agent, on behalf of itself and Lenders;

(b) — (i) except in the case of Inventory on lease to customers in the ordinary course of business (w) is not located on premises located in a state of the United States or the District of Columbia owned, leased or rented by the Borrower or a Domestic Subsidiary and set forth in Schedule 4.16, (x) is stored at a leased location, unless the Administrative Agent has given its prior consent thereto and unless (1) a reasonably satisfactory, landlord waiver has been delivered to the Administrative Agent, or (2) Reserves in an amount equal to three months rent have been established with respect thereto, (y) is stored with a bailee or warehouseman or is in a processor or converter facility unless a reasonably satisfactory, acknowledged waiver or subordination of all Liens and claims by the bailee, warehouseman, processor or converter has been received by the Administrative Agent or Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto, or (z) is located at an owned location subject to a mortgage in favor of a lender other than the Administrative Agent, unless a reasonably satisfactory mortgagee waiver has been delivered to the Administrative Agent or Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto, or (ii) is located at any site if the aggregate book value of Inventory at any such location is less than \$100,000;

(c) — is placed on consignment or is in transit, except for Inventory in transit between domestic locations of the Borrower as to which the Administrative Agent's Liens have been perfected at origin and destination;

(d) — is covered by a negotiable document of title, unless such document has been delivered to the Administrative Agent with all necessary endorsements, free and clear of all Liens except those in favor of the Administrative Agent and Lenders;

(e) — is excess, obsolete, unsaleable, shopworn, seconds, damaged, unfit for sale or customized inventory;

(f) — consists of display items or packing or shipping materials, manufacturing supplies, work in process Inventory to the extent such work in process Inventory in the aggregate exceeds \$5,000,000 or replacement parts;

(g) — is not held for sale or lease in the ordinary course of the Borrower's or a Domestic Subsidiary's business;

(h) — is not subject to a first priority Lien in favor of the Administrative Agent on behalf of itself and Lenders subject to no other Lien other than Permitted Liens that are junior to the Lien of the Administrative Agent securing the Obligations;

(i) ~~breaches any of the representations or warranties pertaining to Inventory set forth in the Loan Documents;~~

(j) ~~consists of any costs associated with "freight in" charges, to the extent such "freight in" charges can be determined by the Borrower;~~

(k) ~~consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available;~~

(l) ~~is not covered by casualty insurance in accordance with Section 7.5;~~

(m) ~~is being leased to a third party as lessee subject to a lease that is not owned by the Borrower or a Domestic Subsidiary or is subject to a lease owned by the Borrower or a Domestic Subsidiary that is subject to a Lien (other than a Permitted Lien); or~~

(n) ~~is being leased to a third party as lessee (i) which has commenced a voluntary case or has consented to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case, under the Bankruptcy Code or (ii) with respect to which a court has entered a decree or order for relief in an involuntary case under the Bankruptcy Code.~~

Section 2.19 ~~Section 2.21~~ Priming and Super Priority Nature of Obligations and Lenders' Liens.

(a) Superpriority Claims and Liens. The Borrower hereby covenants, represents and warrants that, upon entry of the Interim Order (and the Final Order, as applicable), the Obligations of the Borrower under the Loan Documents:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed administrative expense claims in the Chapter 11 Case having priority over all administrative expenses of the kind specified in Sections 503(b), 507(a) or 507(b) of the Bankruptcy Code (it being understood that such claim in respect of the Incremental Revolving Loans, Swing Loans, Letters of Credit, all interest thereon and all fees and expenses of the Administrative and the Lenders under this Agreement ("Revolving Superpriority Claims") shall be paid before any administrative expense claims in respect of the Initial Loan and other Obligations not constituting Revolving Superpriority Claims);

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a perfected first priority Lien on all tangible and intangible property of the Borrower that is not subject to an Existing Lien as of the Petition Date; including, but not limited to claims and causes of action arising under sections 502(d), 544, 545, 547, 548, 549, 550, 551, 553(b), 723(a) or 724(a) of the Bankruptcy Code, the "Avoidance Actions") (it being understood that the Liens so granted on the Avoidance Actions shall be subject to the entry of the Final Order, and the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secure the Initial Loan and other Obligations not constituting Revolving Superpriority Claims);

(iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall be secured by a perfected Lien upon all tangible and intangible property of the Borrower that is subject to an

Existing Lien as of the Petition Date (other than Primed Liens and Pari Passu Liens), junior to such Existing Lien ~~(it being understood that the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secure the Initial Loan and other Obligations not constituting Revolving Superpriority Claims); and~~

(iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, shall be secured by a (x) perfected first priority Lien, senior and priming to the Primed Liens, and (y) perfected Lien, equal to the Pari Passu Liens, on all of the tangible and intangible property of the Borrower ~~other than Term Loan Priority Collateral; provided, however, that the Liens described in this subsection (iv) shall be junior to the Carve-Out, the Existing Liens and to Permitted Senior Prior Liens (as described in the Interim Order and the Final Order, as applicable) (it being understood that the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secure the Initial Loan and other Obligations not constituting Revolving Superpriority Claims);~~

in the case of each of clauses (i) through (iv) above subject only to the following expenses (the "Carve-Out"): (x) the payment of (i) statutory fees payable to the U.S. Trustee (as defined in the Interim Order) and Clerk of the Bankruptcy Court pursuant to 28 U.S.C. § 1930(a)(6); and (ii) after the occurrence of both an Event of Default and on and after the date that written notice thereof is delivered by the Administrative Agent to counsel to the Borrower declaring that the Carve-Out Trigger Date has occurred (the "Carve-Out Trigger Date"), the following fees and expenses, but only to the extent that there are not sufficient, unencumbered funds in the Borrower's estate to pay such amounts at the time payment is permitted to be made: an amount (the "Case Professionals Carve-Out") equal to the sum of (a) the finally allowed and unpaid professional fees and disbursements for any Case Professional (as defined below) incurred after the Carve-Out Trigger Date in an aggregate amount not in excess of \$1,000,000 2,000,000 for all Case Professionals (as defined in the Interim Order), plus (b) all unpaid professional fees and disbursements of such Case Professionals incurred prior to the Carve-Out Trigger Date in each case to the extent such fees and expenses are ultimately allowed on a final basis by the Bankruptcy Court under Sections 328, 330, or 331 of the Bankruptcy Code and any interim compensation procedures order, but solely to the extent that the same constitute Budgeted Professional Fees. "Budgeted Professional Fees" shall mean those fees and expenses incurred by Case Professionals in accordance with the professional fee schedule which is incorporated as part of the Approved Budget (as defined in the Interim Order). "Case Professionals" shall mean any professional (other than an ordinary course professional) retained by the Borrower and any Statutory Committee pursuant to a final order of the Bankruptcy Court (which order has not been vacated or stayed, unless the stay has been vacated) under Sections 327, 328, 363 or 1103(a) of the Bankruptcy Code. To the extent that any payment to a Case Professional is subsequently disallowed and/or disgorged, the proceeds of any claim against the Case Professional for amounts so disallowed or disgorged shall constitute Collateral and as such, shall be subject to the liens and claims granted hereunder;

provided that, except as otherwise provided in the Orders (including, without limitation, investigation rights), no portion of the Carve-Out shall be utilized for the payment of professional include any fees and disbursements incurred in connection with any challenge, contest or litigation as to the amount, extent, priority, validity, perfection or enforcement of the indebtedness of the Borrower owing to the Lenders, or disbursements related to the investigation of, preparation for, or commencement or prosecution of, any claims or proceedings against (x) the Administrative Agent or indemnified parties under the Loan Documents or the Pre-Petition Loans or to the collateral securing the Obligations or the Pre-Petition Loans the Lenders or their claims or security interests in or Liens on, the Collateral whether under this Agreement or any other Loan Document and (y) any holder of Senior Subordinated Notes or their

claims in connection with the Senior Subordinated Notes and Senior Notes Indenture. The Lenders agree that, so long as the Carve-Out Trigger Date shall not have occurred and be continuing, the Borrower shall be permitted to pay compensation and reimbursement of expenses allowed and payable under 11 U.S.C. § 328, 11 U.S.C. § 330 and 11 U.S.C. § 331, as the same may be due and payable, and the same shall not reduce the Carve-Out. The foregoing shall not be construed as a consent to the allowance of any fees and expenses referred to above and shall not affect the right of the Administrative Agent and the Lenders to object to the allowance and payment of such amounts.

(b) Real Property. Subject in all respects to the terms of the Orders, the priorities set forth in paragraph (a) above and to the Carve-Out, the Borrower grants to the Administrative Agent on behalf of the Lenders a security interest in, and mortgage on, all of the right, title and interest of the Borrower in all real property owned by the Borrower and the proceeds of all real property leased by the Borrower, together in each case with all of the right, title and interest of the Borrower in and to all buildings, improvements, and fixtures related thereto, all general intangibles relating thereto and all proceeds thereof, subject and junior, in any event, to any validly Existing Liens. The Borrower acknowledges that, pursuant to the Orders, the Liens in favor of the Administrative Agent on behalf of the Lenders in all of such real property shall be perfected without the recordation of any instruments of mortgage or assignment. The Borrower agrees that upon the reasonable request of the Administrative Agent, the Borrower shall promptly enter into separate mortgages in recordable form with respect to such owned properties on terms reasonably satisfactory to the Administrative Agent.

(c) Discharge. The Borrower agrees that (i) its obligations hereunder shall not be discharged by the entry of an order confirming any plan of reorganization (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Lenders pursuant to the Orders and described in subsection (i) hereof and the Liens granted to the Administrative Agent pursuant to the Orders and the Loan Documents shall not be affected in any manner by the entry of an order confirming any plan of reorganization.

Section 2.20 ~~Section 2.22~~ Payment of Obligations. Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, Administrative Agent and Lenders shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law, in accordance with provisions of the Interim Order and the Final Order, as applicable.

Section 2.21 Release. The Borrower hereby acknowledges, effective upon entry of the Final Order, that the Borrower and any of its Subsidiaries have no defense, counterclaim, offset, recoupment, cross-complaint, claim or demand of any kind or nature whatsoever that can be asserted to reduce or eliminate all or any part of the Borrower's or its Subsidiaries' liability to repay the Administrative Agent or any Lender as provided in this Agreement or to seek affirmative relief or damages of any kind or nature from the Administrative Agent or any Lender (in their respective capacities as such). The Borrower, on behalf of its bankruptcy estate, and on behalf of all its successors, assigns, Subsidiaries and any Affiliates and any Person acting for and on behalf of, or claiming through them, (collectively, the "Releasing Parties"), hereby fully, finally and forever releases and discharges the Administrative Agent and the Lenders and all of the Administrative Agent's and the Lenders' past and present officers, directors, servants, agents, attorneys, other professionals, assigns, heirs, parents, subsidiaries, and each Person acting for or on behalf of any of them (collectively, the "Released Parties") of and from any and all past and present actions, causes of

action, demands, suits, claims, liabilities, Liens, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise (including, without limitation, those arising under Sections 541 through 550 of the Bankruptcy Code and interest or other carrying costs, penalties, legal, accounting and other professional fees and expenses, and incidental, consequential and punitive damages payable to third parties), whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may heretofore accrue against any of the Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact, event or omission or other matter, cause or thing occurring at or from any time prior to and including the date hereof in any way, directly or indirectly arising out of, connected with or relating to this Agreement, the Interim Order, the Final Order, and the transactions contemplated thereby and all other agreements, certificates, instruments and other documents and statements (whether written or oral) related to any of the foregoing

Section 2.22 Payments as Revolving Loans. At the election of the Administrative Agent, all payment Obligations under this Agreement may be paid from the proceeds of Revolving Loans made hereunder. The Borrower hereby irrevocably authorizes the Administrative Agent to deem Revolving Loans to have been made for the purpose of paying all amounts from time to time due by the Borrower hereunder and agrees that all such amounts charged shall constitute Revolving Loans.

ARTICLE 3 CONDITIONS TO LOANS AND LETTERS OF CREDIT

Section 3.1 Conditions Precedent to Initial Loans and Letters of Credit. The obligation of each Lender to make any Loan on the Closing Date and the obligation of each L/C Issuer to Issue any Letter of Credit on the Closing Date is subject to the satisfaction or due waiver by the Administrative Agent acting at the direction of the Required Lenders of each of the following conditions precedent on or before [____], 2009:

(a) Loan Documents. Borrower shall have delivered all documents listed on, the taking of all actions set forth on and the satisfaction of all other conditions precedent listed in Part A of the Closing Checklist, all to the Administrative Agent on or prior to the Closing Date each of the following, each (in the case of clauses (i) through (iv), (vii) and (viii)) dated the Closing Date unless otherwise agreed by the Administrative Agent, in form and substance, or in a manner reasonably satisfactory to the Administrative Agent and Lenders:

(b) Omitted.

(i) this Agreement duly executed by the Borrower and, for the account of each Lender having requested the same by notice to the Administrative Agent and the Borrower received by each at least 3 Business Days prior to the Closing Date (or such later date as may be agreed by the Borrower), Notes conforming to the requirements set forth in Section 2.14(e);

(ii) a copy of each Constituent Document of the Borrower that is on file with any Governmental Authority in the jurisdiction of organization of the Borrower, certified

as of a recent date by such Governmental Authority, together with, if applicable, certificates attesting to the good standing of the Borrower in such jurisdiction and each other jurisdiction where the Borrower is qualified to do business as a foreign entity or where such qualification is necessary (and, if required in any such jurisdiction, related tax certificates);

(iii) a certificate of the secretary or other officer of the Borrower in charge of maintaining books and records of the Borrower certifying as to (A) the names and signatures of each officer of the Borrower authorized to execute and deliver any Loan Document, (B) the Constituent Documents of the Borrower attached to such certificate are complete and correct copies of such Constituent Documents as in effect on the date of such certification and (C) the resolutions of the Borrower's board of directors or other appropriate governing body approving and authorizing the execution, delivery and performance of each Loan Document to which the Borrower is a party;

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

(v) (e) Receipt of Interim Financial Statements. Administrative Agent shall have received and be satisfied with, to the extent available, ~~the~~ interim ~~unaudited~~ audited monthly financial statements of the Borrower and its Subsidiaries for each month during the period from January 1, 2009 through March 31, 2009-2009;

(vi) (d) Receipt of Business Plans. Administrative Agent shall have received and approved in its sole discretion ~~(i)~~ (A) the Pro Forma Balance Sheet at the Petition Date after giving effect to the transactions contemplated by this Agreement, ~~(ii)~~ (B) the initial Budget for the 13-week period beginning on the Petition Date and ~~(iii)~~ (C) the Business Plan.

~~(e) Outstanding Debts and Liens.~~ Administrative Agent shall be satisfied that the Prior Lender Obligations shall have been paid or shall concurrently be paid in full in cash at the time (and with the proceeds of) funding of the Initial Loans under this Agreement.

(b) (f) Interim Order. Issuance and entry by the Bankruptcy Court of the Interim Order, by no later than three days after the Petition Date, among other things, (x) granting a first Liens having the priority perfected security interest in the Collateral subject only as to priority to the Carve Out and the provisions of paragraph (a) of set forth in Section 2.21, and (y) modifying the automatic stay to permit the creation and perfection of Lenders' Liens and, subject to the conditions set forth in the Interim Order, vacating the automatic stay to permit enforcement of Lenders' default-related rights and remedies under this agreement, the other Loan Documents and applicable law, and such Interim Order not have been reversed, modified, amended or stayed.

(c) (g) Pleadings. No pleading or application seeking to amend or modify the provision of this Agreement and the credit facilities provided hereunder on the terms set forth herein shall have been filed in Bankruptcy Court by the Borrower which has not been withdrawn, dismissed or denied within 15 days after filing.

(d) (h) First Day Orders. All First Day Orders entered by the Bankruptcy Court shall be in form and substance reasonably satisfactory to Administrative Agent, other than the Interim Order which shall be acceptable to the Administrative Agent in its sole discretion.

(i) — ~~Fees and Expenses.~~ Borrower shall have paid all fees payable on the Closing Date, including fees payable under the Fee Letter. In addition, Borrower will have paid all fees and expenses of counsel to Administrative Agent and Lenders and of the financial advisor to such counsel accrued with respect to this Agreement, the Pre-Petition Credit Agreement and ~~the transactions contemplated thereby,~~ through the Petition Date.

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

(f) (j) Consents. All consents and approvals of the board of directors, shareholders, governmental entities and other applicable third parties ~~Consents.~~ To the extent applicable upon entry of the Applicable Order, each Group Member shall have received all consents and authorizations required by, and shall have obtained all Permits of, and effected all notices to and filings with, any Governmental Authority, in each case, as may be necessary in connection with the Related Transactions shall have been obtained consummation of the transactions contemplated in any Loan Document (including the Related Transactions).

~~(k) — Perfection of Liens.~~ All filings, recordings and other actions necessary or in Administrative Agent's opinion desirable to the Liens and security interests in Collateral securing the Obligations shall have been made or taken, or arrangements satisfactory to Administrative Agent and its counsel for the completion thereof shall have been made, except as otherwise agreed in writing by Administrative Agent.

~~(l) — Executory Contracts.~~ Borrower shall have delivered to Administrative Agent a list (and at Administrative Agent's request, copies of) all material unexpired executory contracts and unexpired leases to which Borrower is a party.

~~(m) — No Material Adverse Change.~~ Since December 31, 2008, there shall have occurred no material adverse change in the business, condition (financial or otherwise), operations, performance, properties, projections or prospects of the Borrower, other than any change of the type that customarily occurs as a result of the commencement of a proceeding under Chapter 11 of the Bankruptcy Code.

~~(n) — No Litigation.~~ There shall not be pending any action, suit, investigation, litigation or proceeding in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Case) that could reasonably be expected to have a Material Adverse Effect.

~~(o) — PIK Loans.~~ All accrued interest that has not theretofore been added to Pre-Petition Loans and is capable of being added to the Pre-Petition Loans as "PIK Loans" (as such term is defined in the Pre-Petition Credit Agreement) shall have been added to the Pre-Petition Loans in the manner contemplated by the Pre-Petition Credit Agreement, whether or not the interest payment date on which such interest is due shall have occurred (and the Borrower shall be deemed to have elected to have the maximum allowable amount of interest added as a PIK Loan to the Loans on the Closing Date).

(g) Appraisal. The Administrative Agent shall have received a copy of the appraisal most recently performed pursuant to the Pre-Petition Revolving Loan Agreement.

Section 3.2 Conditions Precedent to Each Loan and Letter of Credit. Except as otherwise provided herein, no Lender or L/C Issuer shall be obligated to make any Incremental Revolving Loan or Issue any Letter of Credit Loan if, as of the date thereof:

(a) Request. The Administrative Agent (and, in the case of any Issuance, the relevant L/C Issuer) shall not have received, to the extent required by Article II, a written, timely and duly executed and completed Notice of Borrowing or, as the case may be, L/C Request.

(b) Representations and Warranties; No Defaults.

(i) any representation or warranty by the Borrower contained herein or in any other Loan Document is untrue or incorrect in any material respect (without duplication of any materiality qualifier contained herein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date, and the Administrative Agent or the Required Lenders shall have determined not to make such Incremental Revolving Loan or Issue such Letter of Credit Loan as a result of the fact that such warranty or representation is untrue or incorrect; or

(ii) any Default or Event of Default has occurred and is continuing or would result after making any Loan (or Issuing any Letter of Credit), and the Administrative Agent or the Required Lenders shall have determined not to make any Incremental Revolving Loan or Issue any Letter of Credit Loan as a result of such Default or Event of Default.

(c) Borrowing Availability. The making of the requested Loan or Issuance (as applicable) shall cause the aggregate Incremental Revolving Credit Outstandings to exceed Incremental Borrowing Availability or the Revolving Credit Outstandings to exceed Borrowing Availability plus the Permitted Overadvance Amount; or

(d) Financing Orders. The Interim Order has ceased to be in full force and effect and, if more than thirty-five days has lapsed since the Petition Date, the Final Order has not been entered in the Chapter 11 Case, is not in full force and effect or has been reversed, modified, amended or stayed.

The representations and warranties set forth in any Notice of Borrowing, Swingline Request or L/C Request (or any certificate delivered in connection therewith) shall be deemed to be made again on and as of the date of the relevant Loan or Issuance and the acceptance of the proceeds thereof or of the delivery of the relevant Letter of Credit.

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

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

To induce the Lenders, ~~the L/C Issuers~~ and the Administrative Agent to enter into the Loan Documents, the Borrower represents and warrants to each of them each of the following on and as of each date applicable pursuant to Section 3.2:

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

Section 4.2 Loan and Related Documents.

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

(b) Due Execution and Delivery. From and after its delivery to the Administrative Agent, and upon entry of the Interim Order, each Loan Document ~~and Related Document to which the~~ Borrower is a party has been duly executed and delivered to the other parties thereto by the Borrower, and, subject to the entry of the Applicable Order, is the legal, valid and binding obligation of the Borrower and is enforceable against the Borrower in accordance with its terms, subject to applicable

bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) Senior Subordinated Notes. The Obligations constitute "Permitted Indebtedness", "Senior Debt" and "Designated Senior Debt" under and as defined in the Senior Subordinated Notes Indenture. No other Indebtedness qualifies as "Permitted Indebtedness", "Senior Debt" or "Designated Senior Debt" under the Senior Subordinated Notes Indenture. The Borrower hereby designates all Obligations and Indebtedness in respect of the Revolving Credit Facility as "Designated Senior Debt" as such term is defined in the Senior Subordinated Notes Indenture.

Section 4.3 Ownership of Group Members. Set forth on Schedule 4.3 is a complete and accurate list showing, as of the Closing Date, for each Group Member and each Subsidiary of any Group Member and each joint venture of any of them, its jurisdiction of organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower. All outstanding Stock of each of them has been validly issued, is fully paid and non-assessable (to the extent applicable) and, except in the case of the Borrower, is owned beneficially and of record by a Group Member free and clear of all Liens other than the security interests in favor of the Prior Administrative Agent and the "Administrative Agent" and "Collateral Agent" under (and as such terms are defined in) created by the Loan Documents and the Pre-Petition Term Loan Credit Agreement Documents, any non-consensual Liens arising as a matter of law and permitted under Section 8.2 and, in the case of joint ventures, Permitted Liens. Except as provided in Schedule 4.3, as of the Closing Date, there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Group Member or any of their Subsidiaries of any Stock of any such entity.

Section 4.4 Financial Statements. (a) Each of (i) the audited Consolidated balance sheet of the Borrower as at December 31, 2008 and the related Consolidated statements of income, retained earnings and cash flows of the Borrower for the Fiscal Year then ended, certified by Deloitte & Touche USA LLP, and (ii) subject to the absence of footnote disclosure and normal recurring year-end audit adjustments, the unaudited Consolidated balance sheets of the Borrower as at March 31, 2009, and the related Consolidated statements of income, retained earnings and cash flows of the Borrower for the twelve months then ended, copies of each of which have been furnished to the Administrative Agent, fairly present in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated in accordance with GAAP.

(b) The Business Plan and the Budget delivered on or prior to the date hereof and the updated Budget delivered pursuant to Section 6.8(c) as of the date hereof were prepared or will be prepared, as applicable, in good faith and the assumptions expressed therein are reasonable based on the information available to the Borrower at such date and on the Closing Date.

(c) The unaudited Consolidated balance sheet of the Borrower (the "Pro Forma Balance Sheet") delivered to the Administrative Agent prior to the date hereof, has been prepared as of the last day of the Fiscal Month ending prior to the Closing Date and reflects as of such date, on a Pro Forma Basis for the Related Transactions and the other transactions contemplated herein to occur on the Closing Date, the Consolidated financial condition of the Borrower, and the assumptions expressed therein are reasonable based on the information available to the Borrower at such date and on the Closing Date.

(d) Each Financial Statement delivered pursuant to Section 6.1 has been prepared in accordance with GAAP consistently applied throughout the period covered thereby, and fairly presents in all material respects the financial condition of the Borrower and its Consolidated Subsidiaries for the period covered thereby, except as expressly noted therein, subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments.

Section 4.5 Material Adverse Effect. Since December 31, 2008, the Petition Date, there have been no events, circumstances, developments or other changes in facts that would, in the aggregate, reasonably be expected to have a Material Adverse Effect, other than the filing of the Chapter 11 Case.

Section 4.6 Intercreditor Agreement ~~Intentionally Omitted.~~ Nothing contained in this Agreement, the Interim Order or the Final Order does or will conflict with any material term or provision binding on the Borrower under the Pre-Petition Intercreditor Agreement.

Section 4.9 Section 4.7 Litigation. There are no pending (or, to the knowledge of any Group Member, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes affecting the Borrower or any of its Subsidiaries with, by or before any Governmental Authority other than those that are subject to the automatic stay or would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.10 Section 4.8 Taxes. All federal, state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. No Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities. No Tax Affiliate has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2) or has participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2) that has not been or will not be properly reported. No Tax Affiliate has been with respect to any open tax year a member of an affiliated, combined or unitary group of which a Tax Affiliate is the common parent.

Section 4.11 Section 4.9 Margin Regulations. The Borrower is not engaged in the business of extending credit for the purpose of, and no proceeds of any Loan or other extensions of credit hereunder will be used for the purpose of, buying or carrying margin stock (within the meaning of Regulation U of the Federal Reserve Board) or extending credit to others for the purpose of purchasing or carrying any such margin stock, in each case in contravention of Regulation T, U or X of the Federal Reserve Board.

Section 4.12 ~~Section 4.10~~ No Defaults. Except for defaults arising from the filing of the Chapter 11 Case and defaults with respect to which the Bankruptcy Code prohibits or stays the applicable counterparty from taking remedial or other action, no Group Member (and, to the knowledge of each Group Member, no other party thereto) is in default under or with respect to any Contractual Obligation of any Group Member, other than those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.13 ~~Section 4.11~~ Investment Company Act. No Group Member is an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company", as such terms are defined in the Investment Company Act of 1940.

Section 4.14 ~~Section 4.12~~ Labor Matters. There are no strikes, work stoppages, slowdowns or lockouts existing, pending (or, to the knowledge of any Group Member, threatened) against or involving any Group Member, except, for those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.12, as of the Closing Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Group Member, (b) no petition for certification or election of any such representative is existing or pending with respect to any employee of any Group Member and (c) no such representative has sought certification or recognition with respect to any employee of any Group Member.

Section 4.15 ~~Section 4.13~~ ERISA. Schedule 4.13 sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans and (c) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law has been determined by the Internal Revenue Service to so qualify and nothing has occurred since such determination that could adversely affect such status. Except for those that would not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the knowledge of any Group Member, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Group Member incurs or otherwise has or could have an obligation or any Liability and (z) no ERISA Event is reasonably expected to occur. On the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability in excess of \$500,000 as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made which Withdrawal Liability could be reasonably likely to require any Group Member to make any payment in satisfaction thereof.

Section 4.16 ~~Section 4.14~~ Environmental Matters. Except as set forth on Schedule 4.14, (a) the operations of each Group Member are and, for the past five years, have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all Permits required by any applicable Environmental Law, other than non-compliances that, in the aggregate, would not have a reasonable likelihood of resulting in Material Environmental Liabilities, (b) no Group Member is party to, and no Group Member is subject to or, with respect to any real property currently (or to the knowledge of any Group Member previously) owned, leased, subleased, operated or otherwise occupied by or for any Group Member, the subject of, any Contractual Obligation by any Group Member or any pending (or, to the knowledge of any Group Member, threatened) order, action, suit, proceeding, claim, written demand, dispute or notice of violation or of potential liability or similar notice under or pursuant to any

Environmental Law other than those that, in the aggregate, are not reasonably likely to result in Material Environmental Liabilities, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any property of any Group Member and, to the knowledge of any Group Member, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property, (d) no Group Member has caused or permitted to occur a Release of Hazardous Materials at, to or from any real property of any Group Member and each such real property is free of contamination by any Hazardous Materials except for such Release or contamination that could not reasonably be expected to result, in the aggregate, in Material Environmental Liabilities and (e) no Group Member (i) is or has been engaged in, or has permitted any current or former tenant to engage in, operations, or (ii) knows of any facts, circumstances or conditions, including receipt of any information request or notice of potential responsibility under CERCLA or similar Environmental Laws, that, in the aggregate, would have a reasonable likelihood of resulting in Material Environmental Liabilities.

Section 4.17 ~~Section 4.15~~ **Intellectual Property.** Each Group Member owns or licenses all Intellectual Property that is necessary for the conduct of its businesses as currently conducted. To the knowledge of each Group Member, (a) the conduct and operations of the businesses of each Group Member does not infringe, misappropriate, dilute, violate or otherwise impair any Intellectual Property that is necessary for the conduct of its businesses and owned by any other Person and (b) no other Person has contested any right, title or interest of any Group Member in, or relating to, any Intellectual Property that is necessary for the conduct of its businesses, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. In addition, (x) there are no pending (or, to the knowledge of any Group Member, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes affecting any Group Member with respect to, (y) no judgment or order regarding any such claim has been rendered by any competent Governmental Authority, no settlement agreement or similar Contractual Obligation has been entered into by any Group Member, with respect to and (z) no Group Member knows of any valid basis for any claim based on, any such infringement, misappropriation, dilution, violation or impairment or contest, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.18 ~~Section 4.16~~ **Title; Real Property.** (a) Each Group Member has good fee simple title to all owned real property and valid leasehold interests in all leased real property, and none of such property is subject to any Lien except Permitted Liens.

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

Section 4.19 ~~Section 4.17~~ **Full Disclosure.** No representation or warranty of the Borrower contained in this Agreement, the Financial Statements referred to in Section 6.1, the other Related Documents or any other document, certificate or written statement furnished to the Administrative Agent or any Lender by or on behalf of any such Person for use in connection with the Loan Documents or the Related Documents contains any untrue statement of a material fact or taken as a whole, omitted, omits or

will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made.

Section 4.20 ~~Section 4.18~~ Patriot Act. No Group Member (and, to the knowledge of each Group Member, no joint venture or subsidiary thereof) is in violation in any material respects of any United States Requirements of Law relating to terrorism, sanctions or money laundering (the "Anti-Terrorism Laws"), including the United States Executive Order No. 13224 on Terrorist Financing (the "Anti-Terrorism Order") and the Patriot Act.

Section 4.21 ~~Section 4.19~~ Reorganization Matters.

(a) The Chapter 11 Case was commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (x) the motions seeking approval of the Loan Documents and the Interim Order and Final Order, (y) the hearings for the approval of the Interim Order, and (z) the hearings for the approval of the Final Order will be given. Borrower shall give, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) From and after the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Case having priority over all administrative expense claims and unsecured claims against the Borrower now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out (it being understood that such claim in respect of the Revolving Superpriority Claims shall be paid before any administrative expense claims in respect of the Initial Loan and other Obligations not constituting Revolving Superpriority Claims).

(c) From and after the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral, subject, as to priority only, to the Carve-Out and having the priorities set forth in paragraph (a) of Section 2.21 (it being understood that the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secured the Initial Loan and other Obligations not constituting Revolving Superpriority Claims) 2.21.

(d) The Interim Order (with respect to the period prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect has not been reversed, stayed, modified or amended without the Administrative Agent's and Lenders' consent.

ARTICLE 5
FINANCIAL COVENANTS

The Borrower agrees with the Lenders, the L/C Issuers and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

Section 5.1 Minimum Cumulative Consolidated EBITDA,

~~—The Borrower shall not permit cumulative, on the last date of any Fiscal Month, Consolidated EBITDA for the period beginning on Petition Date and ending on the last day of any calendar month set forth below to be, on a cumulative basis, twelve months then ending to be less than the minimum amount set forth in the table below opposite such day:~~

<u>Last Day of Month</u>	<u>Minimum Cumulative Consolidated EBITDA</u>
May 31, 2009	\$10,064,000 <u>60,096,000</u>
June 30, 2009	\$16,584,000 <u>55,499,000</u>
July 31, 2009	\$22,959,000 <u>54,121,000</u>
August 31, 2009	\$28,976,000 <u>53,316,000</u>
September 30, 2009	\$35,598,000 <u>52,662,000</u>
October 31, 2009	\$40,823,000 <u>54,733,000</u>
November 30, 2009	\$44,376,000 <u>55,141,000</u>
December 31, 2009	\$47,546,000
January 31, 2010	\$48,685,000
February 28, 2010	\$50,971,000
March 31, 2010 <u>December 2009 and each month-end thereafter</u>	\$56,597,000 <u>54,245,000</u>

Section 5.2 Budget Compliance. Subject to the terms and conditions set forth below, the proceeds of Loans made under this Agreement shall be used by the Borrower solely for the purposes and up to the amounts set forth in the Budget for the applicable line item during the applicable seven-day period and:

(a) (i)-(1) for each Budget Period, minimum total cumulative operating receipts of the Borrower for the period from the first day of such Budget Period through the last day of each week (beginning in each case with the 4th week) within such Budget Period (each such period, a "Test Period"), as compared to total cumulative operating receipts for such Test Period set forth in the Applicable Budgets, shall have no negative variance or a negative variance not to exceed (x) for any Test Period ending on the last day of the 4th, 5th, 6th or 7th week of the first Budget Period, 15% of the amount set forth in the Applicable Budget for such Test Period, (y) for any Test Period ending on the last day of the 8th, 9th, 10th, 11th, 12th or 13th week of the first Budget Period, 10% of the amount set forth in the Applicable Budget for such Test Period, or (z) for any subsequent Test Period, 10% of the amount set forth in the Applicable Budget for such Test Period, (2) for each Budget Period, maximum total cumulative operating disbursements (excluding debt service, professional fees and capital expenditures) of the Borrowers as of the last day of each week within each Test Period shall not exceed the amount set forth in the Applicable Budget for such Test Period by more than 10%, (3) for each Budget Period, maximum cumulative professional fees incurred from the Petition Date through the end of each month shall not exceed the amount set forth in the Applicable Budget for such month by more than 10% and (4) for each Budget Period, maximum cumulative capital expenditures made from the Petition Date through the end of each week within each Test Period shall not exceed the amount set forth in the Applicable Budget for such Test Period by more than 10%;

(b) ~~(ii)~~ to the extent any additional line item is added to the Budget in accordance with the provisions of the Interim Order or the Final Order, such line items shall be subject to the same variance provisions as set forth in Section 5.2(i);

(c) ~~(iii)~~ except as expressly set forth above, no unused portion of any line item in the Budget may be carried forward or carried backward to the same or any other line item for any prior or subsequent seven-day period in the Budget; and

(d) ~~(iv)~~ the Administrative Agent (A) may assume that the Borrower will comply with each Budget to the extent required by this Section 5.2, (B) shall have no duty to monitor such compliance and (C) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Budget. The line items in each Budget for payment of interest, expenses and other amounts to Administrative Agent and Lenders are estimates only, and the Borrower remains obligated to pay any and all Obligations in accordance with the terms of the Loan Documents, the Interim Order and the Final Order. Nothing in any Budget ~~(including any estimates of a loan balance in excess of restrictions imposed by the Borrowing Base, Borrowing Availability, or Incremental Borrowing Availability)~~ shall constitute an amendment or other modification of this Agreement or any of such restrictions or other lending limits set forth therein.

ARTICLE 6 REPORTING COVENANTS

The Borrower agrees with the Lenders, ~~the L/C Issuers~~ and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

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

(a) Monthly Reports. As soon as available, and in any event within 30 days after the end of each of the ~~first two Fiscal Months in each Fiscal Quarter~~ Month, the Consolidated unaudited balance sheet of the Borrower as of the close of such Fiscal Month and related Consolidated statements of income and cash flow for such Fiscal Month and that portion of the Fiscal Year ending as of the close of such Fiscal Month, setting forth in comparative form the figures for the corresponding period in the prior Fiscal Year and the corresponding consolidated figures from the Business Plan and the Budget, in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(b) Quarterly Reports. As soon as available, and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the Consolidated unaudited balance sheet of the Borrower as of the close of such Fiscal Quarter and related Consolidated statements of income and cash flow for such Fiscal Quarter and that portion of the Fiscal Year ending as of the close of such Fiscal Quarter, setting forth in comparative form the figures for the corresponding period in the prior Fiscal Year and the figures contained in the latest Business Plan and the Budget, in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated in

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

(c) Annual Reports. As soon as available, and in any event within 90 days after the end of each Fiscal Year, the Consolidated balance sheet of the Borrower as of the end of such year and related Consolidated statements of income, stockholders' equity and cash flow for such Fiscal Year, each prepared in accordance with GAAP, together with a certification by the Group Members' Accountants that such Consolidated Financial Statements fairly present in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated therein in accordance with GAAP without qualification as to the scope of the audit or as to going concern and without any other similar qualification.

(d) Compliance Certificate. Together with each delivery of any Financial Statement pursuant to clause (a), (b) or (c) above, a Compliance Certificate duly executed by a Responsible Officer of the Borrower that, among other things, demonstrates compliance with the covenant set forth in Section 5.15.1, and states that, to the best of his or her knowledge, no Default is continuing as of the date of delivery of such Compliance Certificate or, if a Default is continuing, states the nature thereof and the action that the Borrower proposes to take with respect thereto.

(e) Corporate Chart and Other Collateral Updates. ~~As part of the Compliance Certificate delivered pursuant to clause (d) above, each in form and substance satisfactory to the Administrative Agent, a certificate by a Responsible Officer of the Borrower that (i) the Corporate Chart attached thereto (or the last Corporate Chart delivered pursuant to this clause (e)) is correct and complete as of the date of such Compliance Certificate, (ii) the Borrower has delivered all documents (including updated schedules as to locations of Collateral and acquisition of Intellectual Property or real property) they are required to deliver pursuant to any Loan Document on or prior to the date of delivery of such Compliance Certificate and (iii) complete and correct copies of all documents modifying any term of any Constituent Document of any Group Member or any Subsidiary or joint venture thereof on or prior to the date of delivery of such Compliance Certificate have been delivered to the Administrative Agent or are attached to such certificate.~~ [reserved]

(f) Additional Projections. As soon as available and in any event not later than ~~60~~30 days ~~prior to~~after the end of each Fiscal Year, (i) Projections for the period beginning on January 1, ~~2010~~2010, and ending on the Scheduled Maturity Date, and (ii) any significant revisions to, ~~(x1)~~ the annual business plan of the Group Members for the Fiscal Year next succeeding such Fiscal Year and ~~(y2)~~ forecasts prepared by management of the Borrower (A) for each Fiscal Quarter in such next succeeding Fiscal Year and (B) for each other succeeding Fiscal Year through the Fiscal Year containing the Scheduled Maturity Date, in each case including in such forecasts ~~(1x)~~ a projected year-end Consolidated balance sheet, income statement and statement of cash flows, ~~(2y)~~ a statement of all of the material assumptions on which such forecasts are based and ~~(3z)~~ substantially the same type of financial information as that contained in the Initial Projections.

(g) Management Discussion and Analysis. Together with each delivery of any Compliance Certificate pursuant to clause (d) above, a discussion and analysis of the financial condition and results of operations of the Group Members for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous Fiscal Year.

(h) Audit Reports, Management Letters, Etc. Together with each delivery of any Financial Statement for any Fiscal Year pursuant to clause (c) above, copies of each management letter, audit report or similar letter or report received by any Group Member from any independent registered certified public accountant (including the Group Members' Accountants) in connection with such Financial Statements or any audit thereof, each certified to be complete and correct copies by a Responsible Officer of the Borrower as part of the Compliance Certificate delivered in connection with such Financial Statements.

(i) Insurance. Together with each delivery of any Financial Statement for any Fiscal Year pursuant to clause (c) above, each in form and substance reasonably satisfactory to the Administrative Agent and certified as complete and correct by a Responsible Officer of the Borrower as part of the Compliance Certificate delivered in connection with such Financial Statements, a summary of all material insurance coverage maintained as of the date thereof by any Group Member, together with such other related documents and information as the Administrative Agent may reasonably require.

(j) Additional Deliveries.

~~(i)~~ Weekly, on Monday of each week:

~~(A)~~ a Borrowing Base Certificate with respect to the Borrower and its Domestic Subsidiaries, accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion (in substantially the same form as Exhibit 6.1(j), the "Borrowing Base Certificate") as at Friday of the immediately preceding week;

(i) Upon the request of the Administrative Agent, and in any event no less frequently than noon New York time on the twentieth day after the end of each Fiscal Month (together with a copy of any of the following reports reasonably requested by any Lender in writing after the Closing Date), each of the following reports, each of which shall be prepared by the Borrower as of the last day of the immediately preceding Fiscal Month:

(A) ~~(B)~~ with respect to the Borrower and its Domestic Subsidiaries, a summary of Inventory by location and, to the extent available, by type with a supporting perpetual Inventory report, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion; and

(B) ~~(C)~~ with respect to the Borrower, a monthly trial balance showing Accounts outstanding aged from invoice date as follows: 1 to 30 days, 31 to 60 days, 61 to 90 days, 91 to 120 days, 121 to 150 days and 150 days or more, accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion; and,

~~(D)~~ an aging of accounts payable and a reconciliation of that accounts payable aging to the Borrower's general ledger and monthly Financial Statements delivered pursuant to this Section 6.1, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion.

(ii) (i) To At any time during which the Administrative Agent has blocked the Borrower's access to funds in the deposit account associated with any lock-box established in connection with this Agreement, upon the Administrative Agent's request, to

the Administrative Agent, on a weekly basis or at such more frequent intervals as the Administrative Agent may reasonably request from time to time (together with a copy of all or any part of such delivery requested by any Lender in writing after the Closing Date), collateral reports with respect to the Borrower, including all additions and reductions (cash and non-cash) with respect to Accounts of the Borrower, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion each of which shall be prepared by the Borrower as of the last day of the immediately preceding week or the date 2 days prior to the date of any request;

~~(iii) — At the time of delivery of each of the monthly Financial Statements delivered pursuant to this Section 6.1:~~

~~(A) — a reconciliation of the most recent Borrowing Base, general ledger and month-end Inventory reports of the Borrower to the Borrower's general ledger and monthly Financial Statements delivered pursuant to this Section 6.1, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion;~~

~~(B) — to the extent available, a reconciliation of the perpetual inventory by location to the Borrower's most recent Borrowing Base Certificate, general ledger and monthly Financial Statements delivered pursuant to this Section 6.1, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion;~~

~~(C) — a reconciliation of the outstanding Loans as set forth in the monthly Financial Statements delivered pursuant to this Section 6.1, accompanied by such supporting detail and documentation as shall be requested by Administrative Agent in its reasonable discretion; and~~

~~(D) — a certification that (1) Borrower has not sold, granted a Lien with respect to or advanced against, any Chattel Paper (other than under and pursuant to the Loan Documents) and (2) no Chattel Paper is in the possession of third parties;~~

~~(k) — At the time of delivery of each of the annual Financial Statements delivered pursuant to Section 6.1, (i) a listing of government contracts of the Borrower subject to the Federal Assignment of Claims Act of 1940; and (ii) a list of any applications for the registration of any Patent, Trademark or Copyright filed by the Borrower with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in the prior Fiscal Quarter.~~

(k) (4) Appraisals; Inspections.

(i) The Borrower, at its own expense, shall, promptly upon the reasonable request by the Administrative Agent, deliver to the Administrative Agent the results of each physical verification, if any, that the Borrower or any of its Subsidiaries may in their discretion have made, or caused any other Person to have made on their behalf, of all or any portion of their Inventory (and, if a Default or an Event of Default has occurred and is continuing, the Borrower shall, upon the reasonable request of the Administrative Agent, conduct, and deliver the results of, such physical verifications as the Administrative Agent may reasonably require); and

(ii) ~~The Borrower, at its own expense, shall, promptly upon the reasonable~~ At the request of the Administrative Agent, which may be made at any time an Event of Default has occurred and is continuing, the Borrower, at its own expense, shall cause to be delivered to the Administrative Agent appraisals an appraisal, performed by Rouse Asset Services or another independent appraiser reasonably acceptable to the Administrative Agent, of the ~~Net~~ Orderly Liquidation Value of its Inventory at such times as the Administrative Agent shall reasonably require; and

(iii) The Borrower, at its own expense, shall permit the Administrative Agent or a Person designated by the Administrative Agent to conduct up to one collateral audit during the term of this facility (at the cost and expense of the Borrower); provided, that that so long as an Event of Default is continuing, the Borrower, at its own expense, shall permit the Administrative Agent or a Person designated by the Administrative Agent to perform such collateral audits at such times as the Administrative Agent shall reasonably require. For the purposes of this clause (iii), an audit initiated by the Administrative Agent or such Person while an Event of Default is continuing, shall be required whether or not such Event of Default continues through the time of completion of such audit.

(m) — Bank Account Balances. To Administrative Agent, within five (5) Business Days after the end of each month, Borrower shall deliver a report in form and substance reasonably satisfactory to Administrative Agent with respect to the bank account balances of Borrower.

Section 6.2 Other Events. The Borrower shall give the Administrative Agent notice of each of the following (which may be made by telephone if promptly confirmed in writing) promptly after any Responsible Officer of any Group Member has knowledge thereof: (a)(i) any Default and (ii) any event that would reasonably be expected to have a Material Adverse Effect, specifying, in each case, the nature and anticipated effect thereof and any action proposed to be taken in connection therewith, (b) any event (other than any event involving loss or damage to property) reasonably expected to result in a mandatory payment of the Obligations pursuant to Section 2.8, stating the material terms and conditions of such transaction and estimating the Net Cash Proceeds thereof, (c) the commencement of, or any material developments in, any action, investigation, suit, proceeding, audit, claim, demand, order or dispute with, by or before any Governmental Authority affecting any Group Member or any property of any Group Member that (i) seeks injunctive or similar relief, (ii) in the reasonable judgment of the Borrower, exposes any Group Member to liability in an aggregate amount in excess of \$5,000,000 or (iii) if adversely determined would reasonably be expected to have a Material Adverse Effect and (d) the acquisition of any material real property or the entering into any material lease.

Section 6.3 Copies of Notices and Reports. The Borrower shall, promptly upon their becoming available, deliver to the Administrative Agent copies of each of the following: (a) all reports that the Borrower transmits to its security holders generally, (b) all documents that any Group Member files with the Securities and Exchange Commission, the National Association of Securities Dealers, Inc., any securities exchange or any Governmental Authority exercising similar functions, (c) all press releases not made available directly to the general public and (d) any material document transmitted or received pursuant to, or in connection with, any Contractual Obligation governing Indebtedness of any Group Member in excess of \$25,000,000.

Section 6.4 Taxes. The Borrower shall give the Administrative Agent notice of each of the following (which may be made by telephone if promptly confirmed in writing) promptly after any

Responsible Officer of any Group Member knows or has reason to know of it: (a) the creation, or filing with the IRS or any other Governmental Authority, of any Contractual Obligation or other document extending, or having the effect of extending, the period for assessment or collection of any taxes with respect to any Tax Affiliate and (b) the creation of any Contractual Obligation of any Tax Affiliate, or the receipt of any request directed to any Tax Affiliate, to make any adjustment under Section 481(a) of the Code, by reason of a change in accounting method or otherwise, which would in the case of either (a) or (b) have a Material Adverse Effect.

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

Section 6.6 ERISA Matters. The Borrower shall give the Administrative Agent (a) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, which termination could be reasonably likely to require any Group Member to make any payment in respect thereof, a copy of such notice and (b) promptly, and in any event within 10 days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, which, in either case, could be reasonably likely to require any Group Member to make any payment in respect thereof, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto.

Section 6.7 Environmental Matters. (a) The Borrower shall provide the Administrative Agent notice of each of the following (which may be made by telephone if promptly confirmed by the Administrative Agent in writing) promptly after any Responsible Officer of any Group Member knows (and, upon reasonable request of the Administrative Agent, documents and information in connection therewith): (i)(A) unpermitted Releases, (B) the receipt by any Group Member of any notice of violation of or potential liability or similar notice under, or the existence of any condition that could reasonably be expected to result in violations of or liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, written demand, dispute alleging a violation of or liability under any Environmental Law, that, for each of clauses (A), (B) and (C) above (and, in the case of clause (C), if adversely determined), in the aggregate for each such clause, could reasonably be expected to result in Environmental Liabilities in excess of \$500,000, (ii) the receipt by any Group Member of notification that any property of any Group Member is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iii) any proposed acquisition or lease of real property if such acquisition or lease would have a reasonable likelihood of resulting in aggregate Environmental Liabilities in excess of \$500,000.

(b) Upon reasonable request of the Administrative Agent, the Borrower shall provide the Administrative Agent a report containing an update as to the status of any environmental, health or safety compliance, hazard or liability issue identified in any document delivered to any Secured Party

pursuant to any Loan Document or as to any condition reasonably believed by the Administrative Agent to result in material Environmental Liabilities.

Section 6.8 Additional Deliveries.

(a) Contemporaneously with any such filing or distribution, the Borrower will deliver to the Administrative Agent all pleadings, motions, applications, judicial information, financial information and other documents filed or distributed by or on behalf of the Borrower or its Subsidiaries with the Bankruptcy Court, the United States Trustee in the Chapter 11 Case or any official committee appointed in the Chapter 11 Case.

(b) No later than 30 days after each month, the Borrower will deliver to the Administrative Agent a report detailing for the prior month (i) professional fees and expenses that have been invoiced but unpaid to date in the Chapter 11 Case, (ii) the accumulated "hold-back" of professional fees and expenses to date and (iii) the total professional fees paid in the Chapter 11 Case during such month and to date.

(c) The Borrower shall deliver to the Administrative Agent, weekly, for each 13 week period during the Chapter 11 Case, beginning with the Petition Date, a Budget for such 13 week period, which Budget for the period beginning on the Petition Date shall be delivered on the Closing Date and for any period beginning after the Petition Date shall be delivered at least one week prior to the end of the 13th week covered by the then existing Budget, and in addition, by 5:00 PM, New York time on Monday of each week, (x) an update of such Budget (whereby the first week shall be deleted and updated with the week immediately succeeding the last week included in the previous report) (which the Borrower acknowledges shall provide additional detail acceptable to the Administrative Agent with respect to projections delivered after the date of entry of the Final Order), (y) a detailed reconciliation analysis of actual results compared to projected results for the prior week and compared to such Budget; and (z) a written explanation of all material variances ~~(in substantially the same form and detail as delivered pursuant to the Pre-Petition Credit Agreement).~~

(d) Concurrently with delivering or giving any financial statement, certificate, report, notice or writing, or providing other information, under the foregoing provisions of this Section 6, Borrower will deliver a copy of such financial statement, certificate, report, notice or writing or provide such other information directly to the Lenders. ~~each Lender.~~

(e) From time to time, at the request of the Administrative Agent or any Lender, Borrower shall deliver to the Administrative Agent and the Lenders lists of all financial advisors retained by Borrower and descriptions of the compensation arrangements made with such financial advisors, and shall provide to the Administrative Agent and the Lenders access to such advisors and such other information as the Administrative Agent or any Lender may request with respect to work being performed by such advisors on behalf of the Borrower.

(f) Borrower shall deliver to the Administrative Agent and the Lenders all term sheets, engagement letters, letters of intent, agreements in principle and definitive agreements and, to the extent requested by the Administrative Agent or any Lender, other material documents, in each case received by Borrower relating to any third party interest in purchasing Borrower and Borrower agrees to use commercially reasonable efforts not to enter into any such agreement that is subject to confidentiality provisions that prohibit disclosure thereof to the Administrative Agent and the Lenders.

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

Section 6.9 Conference Calls. On a weekly basis, at such time as the Administrative Agent may determine, a conference call among the Administrative Agent, its advisors, officers of the Borrower and its advisors providing information in detail satisfactory to the Administrative Agent on the Borrower's progress in pursuing strategic alternatives including, but not limited to, the sale of all or substantially all of the assets of the Borrower.

ARTICLE 7 AFFIRMATIVE COVENANTS

The Borrower agrees with the Lenders, ~~the L/C Issuers~~ and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

Section 7.1 Maintenance of Corporate Existence. ~~Each~~ Except as occasioned by the Chapter 11 Case, each Group Member shall (a) preserve and maintain its legal existence, except in the consummation of transactions expressly permitted by Sections 8.4 and 8.7, and (b) preserve and maintain its rights (charter and statutory), privileges franchises and Permits required in the conduct of its business, except, in the case of this clause (b), where the failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 7.2 Compliance with Laws, Etc. ~~Each~~ Except for defaults arising from the filing of the Chapter 11 Case and defaults with respect to which the Bankruptcy Code prohibits or stays the applicable counterparty from taking remedial or other action, each Group Member shall comply with all applicable Requirements of Law, Contractual Obligations and Permits, except for such failures to comply that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

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

Section 7.5 Maintenance of Insurance. Each Group Member shall (a) maintain or cause to be maintained in full force and effect all policies of insurance of any kind with respect to the property and businesses of the Group Members (including policies of life, fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation, business interruption and employee health and welfare insurance) with financially sound and reputable insurance companies or associations (in each case that are not Affiliates of the Borrower) of a nature and providing such coverage as is customarily carried by businesses of the size and character of the business of the Group Members and (b) no later than the date requested in Section 7.14, cause all such insurance relating to any property or business of the Borrower to name the Administrative Agent on behalf of the Secured Parties as additional insured or loss payee, as appropriate, and to provide that no cancellation, material addition in amount or material change in coverage shall be effective until after 30 days' notice thereof to the Administrative Agent; it being understood that such loss payee status shall be in the priority set forth in Section 2.19.

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

Section 7.7 Access to Books and RecordsProperty. Each Group Member shall permit the Administrative Agent, the Lenders and any Related Person of any of them, and any financial advisor to the Lenders or legal counsel to the Administrative Agent or to the Lenders (other than the Administrative Agent), as often as reasonably requested, at any reasonable time during normal business hours and with reasonable advance notice (except that, during the continuance of an Event of Default, no such notice shall be required) to (a) visit and inspect the property of each Group Member and examine and make copies of and abstracts from, the corporate (and similar), financial, operating and other books and records of each Group Member, (b) discuss the affairs, finances and accounts of each Group Member with any officer or director of any Group Member and (c) communicate directly with any registered certified public accountants (including the Group Members' Accountants); provided that if such visit or inspection occurs at any time when no Default has occurred and is continuing, such visit or inspection shall be coordinated through the Administrative Agent and shall be limited to two visits and two inspections during any consecutive twelve-month period. Each Group Member shall authorize ~~its~~their respective registered certified public accountants (including the Group Members' Accountants) to communicate directly with the Administrative Agent, the Lenders and their Related Persons and with any financial advisor to the Lenders or legal counsel to the Administrative Agent or the Lenders, and to disclose to the Administrative Agent, the Lenders and their Related Persons and any financial advisor to the Lenders or legal counsel to the Administrative Agent or the Lenders (other than the Administrative Agent) all financial statements and other documents and information as they might have and the Administrative Agent or any Lender reasonably requests with respect to any Group Member.

Section 7.8 Environmental. Each Group Member shall comply with, and maintain its real property, whether owned, leased, subleased or otherwise operated or occupied, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Action necessary to achieve such compliance or that is required by orders and directives of any Governmental Authority) except for failures to comply that would not, in the aggregate, have a Material Adverse Effect. Without limiting the foregoing, if an Event of Default is continuing or if the Administrative Agent at any time has a reasonable basis to believe that there exist violations of Environmental Laws by any Group Member or that there exist any Environmental Liabilities, in each case, that would have, in the aggregate, a Material Adverse Effect,

then each Group Member shall, promptly upon receipt of request from the Administrative Agent, cause the performance of, and allow the Administrative Agent and its Related Persons access to such real property for the purpose of conducting, such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as the Administrative Agent may from time to time reasonably request. Such audits, assessments and reports, to the extent not conducted by the Administrative Agent or any of its Related Persons, shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to the Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent.

Section 7.9 Use of Proceeds. ~~(i) On the Closing Date, to the extent provided in the Interim Order the Borrower shall borrow the Initial Loan in order to pay, and shall concurrently apply the proceeds of such Initial Loan on the date of entry of the Interim Order, to pay in full, the outstanding balance of the Prior Lender Obligations constituting Obligations (other than L/C Obligations) in each case, as defined in the Pre-Petition Credit Agreement. (ii) Borrower may also use the proceeds of the Incremental Revolving Loans and Swing Loans (x) to make adequate protection payments under the First Day Orders and the Interim Order (y) The proceeds of the Loans shall be used by the Borrower (and, to the extent distributed to them by the Borrower, each other Group Member) solely (i) for the payment of transaction costs, fees and expenses incurred in connection with the Loan Documents and the transactions contemplated therein, (ii) for working capital and general corporate purposes in the ordinary course of business (other than (1) critical vendor payments in an aggregate amount that exceed the amount reflected therefor in the First Day Orders addressing critical vendor payments, (2) retention, incentive and severance payments to employees in amounts that exceed the amount approved by the Administrative Agent, whose approval shall not be unreasonably withheld and (3) fees and expenses of professional persons and other payments, except, in the case of (1), (2) and (3), those made pursuant to First Day Orders) in each case, to the extent set forth in the Budget (in each iteration thereof), so long as the Budget (in each such iteration) is acceptable to Administrative Agent. (iii) Borrower may also use the proceeds of the Incremental Revolving Loans and Swing Loans to pay amounts owing to Administrative Agent, L/C Issuers and Lenders, and (iv) Borrower may also use the proceeds of the Incremental Revolving Loans and Swing Loans (which includes Permitted Adequate Protection Payments) in accordance with the Budget, which budget may be amended and otherwise modified from time to time by the Borrower following entry of the Interim Order with the approval of the Administrative Agent acting at the direction of the Required Lenders, and which general corporate purposes shall include payments of interest hereunder, the Administrative Agent's and Lenders' fees and expenses paid pursuant to this Agreement and any other Obligations hereunder, and (iii) prior to the Carve-Out Trigger Date, to pay fees and expenses of professionals retained by Borrower or the Committee on an interim basis, to the extent set forth in the Budget and subject to such carve-outs and other agreements as may be agreed to by Administrative Agent, to the extent such professional fees and expenses are approved by order of the Bankruptcy Court entered in the Chapter 11 Case, the form of any interim compensation procedures order submitted to the Bankruptcy Court and that, in any event, each such order shall preserve Administrative Agent's right to review and object to any monthly, interim or final request for the payment of fees or reimbursement of expenses submitted to the Bankruptcy Court). Borrower shall not be permitted to use the proceeds of the Loans: (a) for the payment of fees, expenses, interest or principal with respect to Pre-Petition Secured Debt or in any way relating to the Pre-Petition Loan Documents other than Permitted Adequate Protection Payments, (b) to finance in any way any adversary action, suit, arbitration, proceeding, application, motion or other litigation of any type relating to or in connection with the Senior Subordinated Notes or Senior Subordinated Notes Indenture or any of the documents or in instruments entered into in connection therewith, including, without limitation, any challenges to the obligations under the Senior Subordinated Notes, (c) to finance in any way any~~

action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of the Administrative Agent and Lenders or their rights and remedies under this Agreement, the other Loan Documents, the Interim Order or the Final Order, (d) to make any distribution under a plan of reorganization in the Chapter 11 Case and (e) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of the Administrative Agent acting at the direction of the Required Lenders.

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

(a) deliver to the Administrative Agent a pledge agreement such modifications to the terms of the Loan Documents (or to the extent applicable as determined by the Administrative Agent, such other documents), in each case, in form and substance reasonably satisfactory to the Administrative Agent pledging 100% of the voting stock of Dayton Superior Canada Ltd. or, to the extent that pledging more than 65% of such voting stock would cause an adverse tax consequence to the Borrower as reasonably demonstrated by the Borrower to ~~the Administrative Agent~~, 65% of such voting stock; and as the Administrative Agent deems reasonably necessary to ensure the following:

(i) [intentionally omitted]; and

(ii) the Borrower shall grant to the Administrative Agent, for the benefit of the Secured Parties, a valid and enforceable security interest in all of its property (other than property of a type excluded from the granting clauses of the Security Agreement or constituting leased real property), including all of its Stock and Stock Equivalents and other Securities, as security for the Obligations of the Borrower;

provided, however, that in no event shall the Borrower be required to pledge in excess of 66% of the outstanding Voting Stock of any Excluded Foreign Subsidiary or any Subsidiary of an Excluded Foreign Subsidiary;

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

(c) upon request of the Administrative Agent, deliver to the Administrative Agent a Mortgage on any real property owned by the Borrower the fair market value of which exceeds \$1,000,000 ~~and the proceeds of any real property leases by the Borrower on the date of determination,~~ together with all Mortgage Supporting Documents relating to such owned real property thereto (or, if such real property is located in a jurisdiction outside the United States, similar documents deemed reasonably necessary by the Administrative Agent to obtain the equivalent in such jurisdiction of a first-priority mortgage on such real property);

(d) to take all other actions reasonably necessary to ensure the validity or continuing validity of any guaranty for any Obligation or any Lien securing any Obligation, to perfect, maintain, evidence or enforce any Lien securing any Obligation or to ensure such Liens have the same priority as that

of the Liens on similar Collateral set forth in the Loan Documents executed on the Closing Date (or, for Collateral located outside the United States, a similar priority reasonably acceptable to the Administrative Agent), including the filing of UCC financing statements in such jurisdictions as may be required by the Loan Documents or applicable Requirements of Law or as the Administrative Agent may otherwise reasonably request and to become a party to the Pre-Petition Intercreditor Agreement as an "Obligor" pursuant to documents in form and substance reasonably acceptable to the Administrative Agent; and

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

Section 7.11 Deposit Accounts; Securities Accounts and Cash Collateral Accounts(a) ~~_____ (a) The Borrower shall (i) deposit all of its cash (other than (x) cash in respect of any Excluded Account and (y) cash that is the direct proceeds of the Sale of any Term Loan Priority Collateral in which there is an Existing Lien in favor of the "Administrative Agent" and "Collateral Agent" under (and as such terms are defined in) the Pre-Petition Term Loan Credit Agreement as security for "Obligations" as defined therein as of the Petition Date ("Term Loan Priority Proceeds") into deposit accounts that are Controlled Deposit Accounts, and (ii) deposit all of its Cash Equivalents (other than Term Loan Priority Proceeds) into securities accounts that are Controlled Securities Accounts.~~

(b) The Administrative Agent shall not have any responsibility for, or bear any risk of loss of, any investment or income of any funds in any Controlled Deposit Account, or Controlled Securities Account or Cash Collateral Account. From time to time after funds are required to be deposited in any Cash Collateral Account pursuant to the terms hereof or any other Loan Document, the Administrative Agent may apply funds then held in such Cash Collateral Account to the payment of Obligations in accordance with Section 2.12. No Group Member and no Person claiming on behalf of or through any Group Member shall have any right to demand payment of any funds held in any Cash Collateral Account at any time prior to the termination of all Commitments and the payment in full of all Obligations and, in the case of L/C Cash Collateral Accounts, the termination, or to the extent acceptable to the L/C Issuers, the issuance of back-to-back letters of credit issued by issuers and in form and substance satisfactory in all respects to the applicable L/C Issuers and the Administrative Agent in respect of, and in an aggregate amount equal to 105% of the amount of, the outstanding Letters of Credit.

(c) The Administrative Agent will direct that all cash or securities in any Controlled Deposit Account (other than Borrower's disbursement account into which proceeds of the Loans are deposited and other than Term Loan Priority Proceeds) or Controlled Securities Account (other than Term Loan Priority Proceeds) be transferred on a daily basis to a deposit account maintained by and in the name of the Administrative Agent (which may be the deposit account described in Section 2.13(a)) for application to the Obligations. may in its sole and absolute discretion exercise its rights to block access to and direct payment and delivery of cash or securities in any Controlled Deposit Account or Controlled Securities Account only while an Event of Default is continuing, and will terminate such exercise promptly thereafter once no Event of Default is continuing.

Section 7.12 Post-Closing Deliverables. No later than the 10th day after the Closing Date, or such later date as may be agreed to by the Administrative Agent, the Borrower shall deliver to the Administrative Agent (i) the Security Agreement, duly executed by the Borrower, together with copies of UCC, Intellectual Property and other appropriate search reports and of all effective prior filings listed therein, together with evidence of the termination of such prior filings

that are not in respect of any Permitted Lien, in each case as may be reasonably requested by the Administrative Agent and (ii) a duly executed favorable opinion of counsel to the Borrower in New York, addressed to the Administrative Agent and the Lenders and addressing such matters as the Administrative Agent may reasonably request. No later than the 45th day after the Closing Date, or such later date as may be agreed to by the Administrative Agent, Borrower shall deliver to the Administrative Agent: (A) an arrangement satisfactory to the Administrative Agent with respect to (1) the control of all documents representing all certificated Securities required to be pledged pursuant to such Security Agreement and related undated powers or endorsements duly executed in blank, and (2) all Control Agreements that, in the reasonable judgment of the Administrative Agent, are required for the Borrower to comply with the Loan Documents as of the Closing Date, each duly executed by, in addition to the Borrower, the applicable financial institution and (B) insurance certificates in form and substance reasonably satisfactory to the Administrative Agent demonstrating that the insurance policies required by Section 7.5 are in full force and effect and have all endorsements required by such Section 7.5.

Section 7.13 Section 7.12-Further Assurances. Before the date that is forty-five (45) days following the Closing Date (or such longer time as may be agreed to by the Administrative Agent in writing), the Borrower shall deliver to the Administrative Agent those items set forth in Parts C and D of the Closing Checklist, the completion of each of which shall not be conditions to any Loan or Issuance until the end of such forty-five day period and cause to be recorded in the proper recording offices Mortgages for each owned real property of the Borrower identified on Schedule 4.16 (except as may be agreed to by the Administrative Agent), together with all Mortgage Supporting Documents relating thereto,

ARTICLE 8 NEGATIVE COVENANTS

The Borrower agrees with the Lenders, the L/C Issuers and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

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

- (a) the Obligations;
- (b) Pre-Petition Indebtedness of the Borrower as listed and described on Schedule 8.1 hereof; (i) the Pre-Petition Secured Debt in an aggregate outstanding principal amount not in excess of [\$102,313,555] with respect to the Pre-Petition Term Loan Agreement, [\$101,815,591] with respect to the Pre-Petition Revolving Loan Agreement and the letters of credit issued under the Pre-Petition Revolving Loan Agreement with a face amount not in excess of [\$8,924,108], and (ii) the Indebtedness existing on the date hereof and set forth on Schedule 8.1;

- (c) Indebtedness incurred after the Petition Date consisting of Capitalized Lease Obligations (other than with respect to a lease entered into as part of a Sale and Leaseback Transaction) and purchase money Indebtedness, in each case incurred by any Group Member to finance the acquisition, repair, improvement or construction of fixed or capital assets of such Group Member; provided, however, that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed \$1,000,000 at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair

market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time such acquisition, repair, improvement or construction is made);

(d) Capitalized Lease Obligations arising under Sale and Leaseback Transactions entered into prior to the Petition Date;

(e) intercompany loans owing to any Group Member and constituting Permitted Investments of such Group Member;

(f) [omitted]

(g) [omitted]

(h) unsecured Indebtedness of the Borrower owing under the Senior Subordinated Notes pursuant to the Senior Subordinated Notes Indenture; provided, however, that the aggregate outstanding principal amount of all such Indebtedness shall not exceed \$155,000,000 at any time;

(i) ~~the Indebtedness under the Pre-Petition Term Loan Credit Agreement subject to the limitations imposed by the Pre-Petition Intercreditor Agreement; [omitted]~~

(j) [omitted]

(k) [omitted]

(l) Indebtedness of Dayton Superior Canada Ltd. in a principal amount not exceeding \$1,000,000 or its equivalent in Canadian dollars outstanding at any time, provided, that (i) the credit agreement and related documents are in form and substance reasonably satisfactory to the Administrative Agent and (ii) Borrower shall not have any liability with respect to such Indebtedness or shall provide any collateral security or other support with respect thereto;

(m) [omitted]

(n) Indebtedness arising from performance and surety bonds and completion guarantees provided by the Borrower or any Subsidiary of the Borrower in the ordinary course of business not in excess of \$1,000,000 in the aggregate outstanding at any time; and

(o) Indebtedness arising under indemnity agreements to title insurers to cause such title insurers to issue to the Administrative Agent mortgagee title insurance policies.

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

(a) Liens created pursuant to any Loan Document, the Interim Order or the Final Order;

(b) Customary Permitted Liens of Group Members;

(c) Liens existing on the date hereof and (i) with respect to the Indebtedness permitted in Section 8.1(b)(i) or (ii) set forth on Schedule 8.2 and 8.2, and with respect to this clause (ii), including any extensions or renewals thereof;

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

(e) Liens on property of the Borrower or any of its Subsidiaries securing Indebtedness permitted under Section 8.1(d) provided, however, that (i) such Liens exist prior to the Petition Date and (ii) such Liens do not extend to any property of any Group Member other than the property (and proceeds thereof) acquired or built, or the improvements or repairs, financed by such Indebtedness;

~~(f) — Liens in favor of the "Administrative Agent" and "Collateral Agent" under (and as such terms are defined in) the Pre-Petition Term Loan Credit Agreement and securing the "Obligations," (as such term is defined therein as of the Petition Date); and~~

~~(g) —~~ (f) subject to the priorities provided in the Interim Order or the Final Order, as applicable, the Prior Lender Replacement Liens and the Lender Expense Replacement Liens.

The prohibition provided for in this Section 8.2 specifically includes, without limitation, any effort by the Borrower, any Committee or any other party-in-interest in the Chapter 11 Case to prime or create pari passu to any claims, Liens or interests of the Administrative Agent and Lenders any Lien (other than the Carve-Out) irrespective of whether such claims, Liens or interests may be "adequately protected". Borrower shall not grant a Lien on any property that does not constitute Collateral to any creditor of the Borrower.

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

(a) Investments existing on the date hereof and set forth on Schedule 8.3;

(b) Investments in cash and Cash Equivalents;

(c) (i) endorsements for collection or deposit in the ordinary course of business consistent with past practice, (ii) extensions of trade credit (other than to Affiliates of the Borrower) arising or acquired in the ordinary course of business and (iii) Investments received in settlements in the ordinary course of business of such extensions of trade credit;

~~(d) — [omitted]~~

(d) ~~(e)~~ Investments by the Borrower or any Group Member in any other Group Member or in any joint venture; provided, however, that the aggregate outstanding amount of all Investments by the Borrower permitted pursuant to this clause (ed) shall not exceed the amount set forth

therefore in the Budget at any time; and provided, further, that any Investment consisting of loans or advances to the Borrower shall be subordinated in full to the payment of the Obligations of the Borrower on terms and conditions reasonably satisfactory to the Administrative Agent; ~~and~~

(e) ~~(f)~~ loans or advances to employees of the Borrower or any of its Subsidiaries to finance travel, entertainment and relocation expenses and other ordinary business purposes in the ordinary course of business as presently conducted; provided, however, that the aggregate outstanding principal amount of all loans and advances permitted pursuant to this clause (fe) shall not exceed the amount set forth therefor in the Budget; and

(f) any Investment by the Borrower or any of its Subsidiaries consented to by the Administrative Agent.

Section 8.4 Asset Sales. No Group Member shall Sell any of its property (other than cash or Cash Equivalents) or issue shares of its own Stock, except for the following:

(a) in each case to the extent entered into in the ordinary course of business and made to a Person that is not an Affiliate of the Borrower, (i) Sales of Cash Equivalents, inventory (including items in the rental fleet), (ii) Sales of property that has become obsolete or worn out and (ii) non-exclusive licenses of Intellectual Property;

(b) ~~{omitted}~~ a true lease or sublease of real property not constituting Indebtedness and not entered into as part of a Sale and Leaseback Transaction;

(c) (i) any Sale of any property (other than their own Stock or Stock Equivalents) by any Group Member to any other Group Member to the extent any resulting Investment constitutes a Permitted Investment, (ii) any Restricted Payment by any Group Member permitted pursuant to Section 8.5 and (iii) any distribution by the Borrower of the proceeds of Restricted Payments from any other Group Member to the extent permitted in Section 8.5; and

(d) (i) any Sale or issuance by the Borrower of its own Stock, (ii) any Sale or issuance by any Subsidiary of the Borrower of its own Stock to any Group Member or any other Person to the extent not prohibited by this Agreement or creating a Default or Event of Default, provided, however, that in the case of this clause (ii), the proportion of such Stock and of each class of such Stock (both on an outstanding and fully-diluted basis) held by the Borrower does not change as a result of such Sale or issuance and (iii) to the extent necessary to satisfy any Requirement of Law in the jurisdiction of incorporation of any Subsidiary of the Borrower, any Sale or issuance by such Subsidiary of its own Stock constituting directors' qualifying shares or nominal holdings.

Section 8.5 Restricted Payments. No Group Member shall directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment except for the following:

(a) (i) Restricted Payments (A) ~~{omitted}~~ and (B) ~~by any Group Member to any other Group Member that is a Credit Party~~ not the Borrower to any other Group Member and (ii) dividends and distributions by any Subsidiary of the Borrower to any holder of its Stock, to the extent made to all such holders ratably according to their ownership interests in such Stock; and

(b) Restricted Payments approved by the Administrative Agent pursuant to First Day Orders or otherwise in writing;

(c) dividends and distributions declared and paid on the common Stock of any Group Member ratably to the holders of such common Stock and payable only in common Stock of such Group Member; and

(d) if no Default or Event of Default shall have occurred and be continuing or shall occur as a consequence thereof, the acquisition of any shares of Stock of the Borrower (the "Retired Capital Stock") either (i) solely in exchange for shares of Qualified Capital Stock of the Borrower (the "Refunding Capital Stock") or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Borrower) or shares of Qualified Capital Stock of the Borrower.

Section 8.6 Prepayment of Indebtedness; Pre-Petition Payments. (i) ~~No~~ Except pursuant to the Plan or pursuant to an order of the Bankruptcy Court consented to by the Administrative Agent and acting at the direction of the Required Lenders, no Group Member shall (x) prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Pre-Petition Indebtedness, Pre-Petition Secured Debt or Subordinated Debt, (y) set apart any property for such purpose, whether directly or indirectly and whether to a sinking fund, a similar fund or otherwise, or (z) make any payment in violation of any subordination terms of any Indebtedness; provided, however, that each Group Member may, to the extent not otherwise prohibited by the Loan Documents, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof (or set apart any property for such purpose) (A) in the case of any Group Member that is not the Borrower, any Indebtedness owing by such Group Member to any other Group Member and (B) otherwise, any Indebtedness owing to the Borrower; and (ii) ~~Borrower shall not make any Pre-Petition Payment other than Pre-Petition Payment of the Prior Lender Obligations and Pre-Petition Payments specifically contemplated in the First Day Orders, the Interim Order, the Final Order, the Budget or payments otherwise approved in writing by the Administrative Agent or in connection with the assumption of any contract or lease approved by the Bankruptcy Court and consented to by the Administrative Agent.~~

Section 8.7 Fundamental Changes. No Group Member shall (a) merge, consolidate or amalgamate with any Person, (b) acquire all or substantially all of the Stock or Stock Equivalents of any Person or, (c) acquire all or substantially all of the assets of any Person or all or substantially all of the assets constituting any line of business, division, branch, operating division or other unit operation of any Person, in each case except for the following: the merger, consolidation or amalgamation of any Subsidiary of the Borrower into the Borrower; provided, however, that all actions required to maintain the perfection of the Lien of the Administrative Agent on the Stock or property of the Borrower shall have been made or (d) form any Subsidiary.

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

Section 8.9 Transactions with Affiliates. No Group Member shall, except as otherwise expressly permitted herein, enter into any other transaction directly or indirectly with, or for the benefit of, any Affiliate of the Borrower (including Guaranty Obligations with respect to any obligation of

any such Affiliate) other than (x) transactions with any such Affiliate that are on terms that are not materially less favorable to such Group Member than those that might reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person not an Affiliate of such Group Member and (y) each of the following:

(a) reasonable fees and compensation paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Borrower or any Subsidiary of the Borrower as determined in good faith by the Borrower's Board of Directors or senior management;

(b) transactions exclusively between or among the Borrower and its Subsidiaries; provided such transactions are not otherwise prohibited by this Agreement;

(c) Restricted Payments permitted by this Agreement and Investments permitted by this Agreement;

(d) — [omitted]; and

(e) payments or loans to employees or consultants that are approved by the Board of Directors of Borrower in good faith;

provided, however, that notwithstanding anything in the foregoing to the contrary, the Borrower shall not pay any management, consulting or advisory fees or related expenses to Odyssey Investment Partners and general or limited partners made pursuant to any financial advisory, financing, underwriting or placement agreement or in respect of other investment banking activities.

Section 8.10 Third-Party Restrictions on Indebtedness, Liens, Investments or Restricted Payments. No Group Member shall incur or otherwise suffer to exist or become effective or remain liable on or responsible for any Contractual Obligation limiting the ability of (a) any Subsidiary of the Borrower to make Restricted Payments to, or Investments in, or repay Indebtedness or otherwise Sell property to, any Group Member or (b) any Group Member to incur or suffer to exist any Lien upon any property of any Group Member, whether now owned or hereafter acquired, securing any of its Obligations (including any "equal and ratable" clause and any similar Contractual Obligation requiring, when a Lien is granted on any property, another Lien to be granted on such property or any other property), except, for each of clauses (a) and (b) above, (x) pursuant to the Loan Documents, the Pre-Petition Credit Agreements, the Pre-Petition Loan Documents, the Pre-Petition Term Loan Documents (as in effect on the Closing Date) and the Senior Subordinated Notes Indenture (as in effect on the Closing Date), and (y) limitations on Liens (other than those securing any Obligation) on any property whose acquisition, repair, improvement or construction is financed by purchase money Indebtedness, Capitalized Lease Obligations in reliance upon Section 8.1(b) or (c) set forth in the Contractual Obligations governing such Indebtedness, Capitalized Lease Obligations or Guaranty Obligations with respect thereto.

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

(a) waive or otherwise modify any term of any Related Document or any Constituent Document of, or otherwise change the capital structure of, any Group Member (including the terms of any of their outstanding Stock or Stock Equivalents), in each case except for those modifications and waivers that (x) do not elect, or permit the election, to treat the Stock or Stock Equivalents of any limited liability

company (or similar entity) as certificated and (y) do not materially and adversely affect the rights and privileges of any Group Member and do not materially and adversely affect the interests of any Secured Party under the Loan Documents or in the Collateral;

(b) waive or otherwise modify any term of any Subordinated Debt in a manner contrary to any applicable subordination agreement; or in any manner that would not be permitted as a Permitted Refinancing thereof; or

~~(c) — waive or otherwise modify any term of the “Loan Documents” (as such term is defined in the Pre-Petition Term Loan Credit Agreement) in a manner contrary to the Pre-Petition Intercreditor Agreement;~~

~~(d) — permit any Indebtedness (other than the Obligations, the “Obligations,” (as such term is defined in and the Pre-Petition Term Loan Credit Agreement as of the Petition Date Secured Debt) to qualify as “Designated Senior Debt” under the Senior Subordinated Notes Indenture or permit the Obligations to cease qualifying as such or as “Senior Debt” as defined in the Senior Subordinated Notes Indenture; or,~~

~~(e) — except as approved in writing by the Administrative Agent, assume, reject, cancel, terminate, breach or modify (x) any material agreement, contract, instrument or other document to which any Group Member is a party or (y) any other agreement, contract, instrument or other document if such assumption, rejection, cancellation, termination, breach or modification under this clause (y), either individually or in the aggregate, would have a negative effect on the value of the Collateral or a Material Adverse Effect upon Borrower’s operations.~~

Section 8.12 Accounting Changes; Fiscal Year. No Group Member shall change its (a) accounting treatment or reporting practices, except as permitted or required by GAAP or any Requirement of Law, or (b) its Fiscal Year or its method for determining Fiscal Quarters or Fiscal Months; provided that upon thirty (30) days’ prior notice to the Administrative Agent the Group Members may change their Fiscal Year, Fiscal Quarter or Fiscal Month (such change to be applicable to all Group Members included in consolidated financial reporting under GAAP); provided, further, that (i) such change does not defer the delivery of audited financial statements required hereunder by more than one Fiscal Quarter and (ii) the Borrower shall deliver such financial information (including reconciliations if required under GAAP) as the Administrative Agent may reasonably request with respect to such change in Fiscal Year.

Section 8.13 Margin Regulations. No Group Member shall use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

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

Section 8.15 Hazardous Materials. No Group Member shall cause, or permit any other Person to cause, any Release of any Hazardous Material at, to or from any real property owned, leased,

subleased or otherwise operated or occupied by any Group Member that would violate any Environmental Law, form the basis for any Environmental Liabilities or otherwise adversely affect the value or marketability of any real property (whether or not owned by any Group Member), other than such violations, Environmental Liabilities and effects that would not, in the aggregate, have a Material Adverse Effect.

Section 8.16 Bankruptcy Matters. Borrower shall not (i) incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against the Borrower hereunder, except for the Carve-Out; (ii) seek or consent to, any modification, stay, vacation or amendment to (A) any First Day Order having a material adverse effect on the rights of the Lenders under this Agreement or (B) the Interim Order and Final Order; (iii) seek or consent to any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents; or (iv) seek or consent to any plan of reorganization or liquidation unless (x) all of the Obligations are to be paid in full in cash or other immediately available funds and the arrangements provided for herein terminated pursuant thereto prior to or contemporaneously with the effectiveness of such plan and (y) the Administrative Agent and the Required Lenders otherwise consent or agree to treatment of all of their claims.

Section 8.17 Certain Expenses. From and after the Petition Date, the Borrower shall not make cash expenditures for (i) any "key employee incentive expenses", retention payments and severance payments to employees without the prior written approval of the Administrative Agent, which approval shall not be unreasonably withheld, (ii) "utility deposits" in excess of \$416,375 in the aggregate or (iii) "critical vendor payments" in excess of those provided for by the First Day Orders.

ARTICLE 9 EVENTS OF DEFAULT

Section 9.1 Definition. Except Subject to the Applicable Orders, notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion to, hearing before, or order of the Bankruptcy Court or any notice to the Borrower, and subject to Section 9.2, except for defaults occasioned by the filing of the Chapter 11 Case and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits the Borrower from complying or permits the Borrower not to comply, the occurrence of any one or more of the following events (regardless of the reason therefore) shall constitute an "Event of Default" hereunder:

(a) the Borrower shall fail to pay (i) any principal of any Loan or any L/C Reimbursement Obligation when the same becomes due and payable or (ii) any interest on any Loan, any fee under any Loan Document or any other Obligation (other than those set forth in clause (i) above) and, in the case of this clause (ii), such non-payment continues for a period of 1 Business Days after the due date therefor or (iii) on or prior to the close of business on the first Business Day after the entry of the Final Order, the fees required under the Fee Letter; or

(b) any representation, warranty or certification made or deemed made by or on behalf of the Borrower in any Loan Document or by or on behalf of the Borrower (or any Responsible Officer thereof) in connection with any Loan Document (including in any document delivered in connection with any Loan Document) shall prove to have been incorrect in any material respect when made or deemed made; or

(c) the Borrower shall fail to comply with (i) any provision of Section 6.1, 6.8, 6.1 (Financial Statements), 6.8 (Additional Deliveries), 7.1 (Maintenance of Corporate Existence), 7.9 (Use of Proceeds), 7.13 (Post-Closing Deliverables), Article V (Financial Covenants) or Article VIII (Negative Covenants) or (ii) any other provision of any Loan Document (other than those specified in clauses (a), (b) and (c)(i) of this Section 9.1) if, in the case of this clause (ii), such failure shall remain unremedied for 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower becomes aware of such failure and (B) the date on which notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; or

(d) (i) any Group Member shall fail to make any payment when due (whether due because of scheduled maturity, required prepayment provisions, acceleration, demand or otherwise), after giving effect to any applicable grace period, on any Post-Petition Indebtedness of any Group Member (other than the Obligations or any Hedging Agreement) and, in each case, such failure relates to Indebtedness having a principal amount of ~~\$2,500,000~~ \$5,000,000 or more, (ii) any other event shall occur or condition shall exist under any ~~Post-Petition~~ Contractual Obligation relating to any such Post-Petition Indebtedness (other than the Obligations), if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such ~~Post-Petition~~ Indebtedness having an individual principal amount in excess of ~~\$2,500,000~~ \$5,000,000 or (iii) any such Post-Petition Indebtedness (other than the Obligations) having an individual principal amount in excess of ~~\$2,500,000~~ \$5,000,000 shall become or be declared to be due and payable, or be required to be prepaid, redeemed, defeased or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(e) ~~Omitted; or~~ [intentionally omitted]; or

(f) one or more judgments, orders or decrees (or other similar process) shall be rendered against any Group Member (i)(A) in the case of money judgments, orders and decrees, involving an aggregate amount (excluding amounts adequately covered by insurance payable to any Group Member, to the extent the relevant insurer has not denied coverage therefor) in excess of ~~\$2,500,000~~ \$5,000,000 or (B) otherwise, that would have, in the aggregate, a Material Adverse Effect and (ii)(A) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order or decree or (B) such judgment, order or decree shall not have been vacated or discharged for a period of 30 consecutive days and there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof; or

(g) except pursuant to a valid, binding and enforceable termination or release permitted under the Loan Documents and executed by the Administrative Agent or as otherwise expressly permitted under any Loan Document, (i) any provision of any Loan Document shall, at any time after the delivery of such Loan Document, fail to be valid and binding on, or enforceable against, the Borrower party thereto, (ii) any Loan Document purporting to grant a Lien to secure any Obligation shall, at any time after the delivery of such Loan Document, fail to create a valid and enforceable Lien on any ~~Collateral that constitutes part of the Borrowing Base or any material portion of any other~~ Collateral purported to be covered thereby or such Lien shall fail or cease to be a perfected Lien with the priority required in the relevant Applicable Order or Loan Document on any ~~Collateral that constitutes part of the Borrowing Base or any material portion of any other~~ Collateral or (iii) any subordination provision pertaining to Subordinated Debt shall, in whole or in part, terminate or otherwise fail or cease to be valid and binding on, or enforceable against any holder of Subordinated Debt or any trustee or representative thereof, or any Group Member shall state in writing that any of the events described in clause (i), (ii) or (iii) above shall have occurred; or

(h) ~~any information contained in any Borrowing Base Certificate is untrue or incorrect in any respect (other than inadvertent, immaterial errors not exceeding \$250,000 in the aggregate in any Borrowing Base Certificate), or any representation or warranty herein or in any Loan Document or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate) made or delivered to the Administrative Agent or any Lender by the Borrower is untrue or incorrect in any material respect (without duplication of materiality qualifiers contained therein) as of the date when made or deemed made; or~~

(i) ~~there shall occur any Change of Control; or~~

(j) ~~the Borrower shall extend the expiration date of the Exchange Offer and Consent Solicitation Relating to Debt Securities Issued by Dayton Superior Corporation, issued by the Borrower on July 15, 2008 (the "Exchange Offer") to a date beyond April 9, 2009 or shall accept any of the Senior Subordinated Notes pursuant to the Exchange Offer; or~~

(k) ~~at any time after the 10th day from the Petition Date, the Borrower shall fail to continue to engage (i) a consultant acceptable to Administrative Agent (it being understood that Alix Partners, Alvarez & Marsal or Mesirow Financial Consulting, LLC is acceptable to Administrative Agent) to provide operational advice, perform cash flow modeling and otherwise provide advisory services pursuant to such terms of engagement (including such other duties and responsibilities) as are acceptable to Administrative Agent) and (ii) an investment banker acceptable to Administrative Agent (it being understood that Moelis and Company LLC and/or their Affiliates are acceptable to Administrative Agent) on terms and conditions and with respect to duties and responsibilities acceptable to Administrative Agent); or~~

(i) ~~(i)~~ the occurrence of any of the following in the Chapter 11 Case:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by the Borrower in the Chapter 11 Case, or the entry of an order (a) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code from any entity other than the Lenders not otherwise permitted by this Agreement, (b) to authorize any Person to recover from any portions of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or (c) except as provided in the Final Order or the Interim Order, to use cash collateral without the Required Lenders' prior written consent under Section 363(c) of the Bankruptcy Code or (d) to grant any Lien other than Permitted Liens upon or affecting any Collateral;

(ii) without the prior written consent of the Required Lenders, the dismissal of the Chapter 11 Case or the conversion of the Chapter 11 case to a case under chapter 7 of the Bankruptcy Code;

(iii) the entry of an order which has not been withdrawn, dismissed or reversed (a) appointing an interim or permanent trustee in the Chapter 11 Case or the appointment of an examiner with expanded powers in the Chapter 11 Case, (b) granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral or on any other property or assets of Borrower, in either case in excess of \$100,000 or (y) with respect to any Lien of, or the granting of any Lien on any Collateral or any other property or assets of Borrower to, any state or local environmental or regulatory

agency or authority, in each case with a value in excess of \$100,000, (c) amending, supplementing, staying, reversing, vacating or otherwise modifying any of the Interim Order, the Final Order, any order providing for adequate protection Liens on the Collateral in favor of the Prior Lenders, this Agreement or any other Loan Document, or Administrative Agent's, or any Lender's, ~~Prior Administrative Agent's or Prior Lenders'~~ rights, benefits, privileges or remedies under the Interim Order, the Final Order, this Agreement, or any other Loan Document or any Pre-Petition Loan Document or (d) approving a sale pursuant to section 363 of the Bankruptcy Code or approving bidding procedures therefore, other than any such order (under this clause (d)) that is satisfactory to the Administrative Agent in its sole discretion;

(iv) the occurrence of any Termination Event;

(v) Borrower, without the prior written consent of the Required Lenders, filing a plan of reorganization for Borrower or any modification thereto that does not provide for the repayment in full in cash of the Obligations and the termination of the Commitments in accordance with the terms thereof on the effective date of the plan, or the entry by the Bankruptcy Court of an order confirming any such plan, or the filing a motion to withdraw any plan of reorganization filed by Borrower the filing of which caused a Termination Event not to occur;

(vi) the termination or modification of Borrower's exclusivity as to the proposal of any reorganization plan;

(vii) Borrower consolidating or combining with any other Person except pursuant to a confirmed plan of reorganization with the prior written consent of Required Lenders;

(viii) the challenge by the Borrower (or the support by Borrower of the challenge by any other Person) to the Administrative Agent's, or any Lender's, ~~the Prior Administrative Agent's, or any Prior Lenders'~~ motion seeking confirmation of amount of such Administrative Agent's, Lenders', ~~Prior Administrative Agent's or Prior~~ or Lenders' claim or the validity, extent, perfection, priority or characterization of any obligations incurred ~~or Liens granted~~ under or in connection with the ~~Pre-Petition Credit Agreement~~ Senior Subordinated Notes;

(ix) the challenge by Borrower (or the support by Borrower of the challenge by any other Person) to (a) disallow in whole or in part the claim of the ~~Prior Administrative Agent or the Prior Lenders under the Pre-Petition Credit Agreement or the claim of the Administrative Agent or any Lender in respect of Obligations or to challenge the validity, perfection and enforceability of any of the Liens in favor of any of them, or~~ (b) equitably subordinate or re-characterize in whole or in part the claim of the Administrative Agent or any Lender in respect of the Obligations ~~or the Prior Agent or Pre-Petition Lender in respect of the Pre-Petition Indebtedness, or in each case, or~~ the entry of an order by the Bankruptcy Court granting the relief described above;

(x) the filing of a lawsuit, adversary proceeding, claim or counterclaim related to ~~Borrower or Collateral or pre-petition collateral against the Administrative Agent, any Lender, Prior Administrative Agent, or any Prior Lender by Borrower;~~ commencement of a suit or action against the Administrative Agent or any Lender and, as to any suit or action brought by any person other than the Borrower or a Subsidiary, officer or employee of the Borrower, the continuation thereof without dismissal for thirty (30) days after service thereof on such the Administrative Agent or such Lender, that asserts or seeks by or on behalf of the Borrower,

the Environmental Protection Agency, any state environmental protection or health and safety agency, any official committee in the Chapter 11 Case (including the Committee) or any other party in interest in any of the Chapter 11 Case, (a) a claim in excess of \$1,500,000, (b) any legal or equitable remedy that would have the effect of subordinating any or all of the Obligations or Liens of any the Administrative Agent or any Lender under the Loan Documents to any other claim or interest, (c) would otherwise have a Material Adverse Effect, or (d) have a material adverse effect on the rights and remedies of the Administrative Agent or any Lender under any Loan Document or the collectability of all or any portion of the Obligations;

(xi) the application by Borrower for authority to make any Pre-Petition Payment without the Administrative Agent's prior written consent, other than pursuant to the First Day Orders and other than as part of Permitted Adequate Protection Payments;

(xii) without the Administrative Agent's prior written consent, the sale of assets of the Borrower either through a sale pursuant to section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Case or otherwise, unless the Obligations are paid in full in cash and the Commitments hereunder are terminated upon consummation of such sale;

~~(xiii) the entry of an order in the Chapter 11 Case avoiding or requiring repayment of any portion of the Pre-Petition Loans;~~

~~(xiii)~~ (xiv) subject to any applicable cure periods contained in such Order, the failure of Borrower to perform its obligations under the Interim Order or the Final Order or the failure of Borrower to provide, or any unenforceability or other failure of (whether resulting from a reversal, stay, vacation or modification of any such order or otherwise), any adequate protection provided to the Prior Administrative Agent or Prior Lenders under the Pre-Petition Credit Agreement in the First Day Orders or Interim Order or as otherwise ordered by the Bankruptcy Court;

~~(xiv)~~ (xv) the use, remittance or the application of proceeds of Collateral in contravention of the terms of the Loan Documents or the Orders or First Day Orders;

~~(xv)~~ (xvi) the entry of an order in the Chapter 11 Case authorizing procedures for interim compensation of professionals that is not in form and substance acceptable to the Administrative Agent;

~~(xvi)~~ (xvii) without the prior written consent of the Administrative Agent, Borrower incurs, creates, assumes, suffers to exist or permits any superpriority claim in the Chapter 11 Case that is pari passu with or senior to the claims of the Lenders and Administrative Agent, other than the Carve-Out and as otherwise permitted in Section 2.19;

~~(xvii)~~ (xviii) the marshaling of any Collateral;

~~(xviii)~~ (xix) Borrower requesting or seeking authority for or that approves or provides authority to take any other action or actions adverse to the Administrative Agent or any Lender or its rights and remedies under the Loan Documents or its interest in the Collateral; or

(xix) ~~(xx)~~ the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by the Borrower to which the Administrative Agent or any Lender does not consent or otherwise agree to the treatment of its claims in any capacity.

Section 9.2 Remedies.

(a) ~~Termination of Commitments.~~ Upon the occurrence of any Default or Event of Default, Administrative Agent may, and at the request of Required Lenders Administrative Agent shall, notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to and in accordance with the terms of the Interim Order or Final Order, as applicable, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, without notice or demand, immediately suspend or terminate all or any portion of Lenders' obligations to make additional Incremental Revolving Loans or Issue or cause to be Issued Letters of Credit under the Incremental Revolving Loan Commitments; provided that, in the case of a Default, if the subject condition or event is waived by Required Lenders or cured within any applicable grace or cure period, the Incremental Revolving Loan Commitments shall be reinstated.

(b) ~~Acceleration and other Remedies.~~ If any Event of Default has occurred and is continuing, Administrative Agent may (and at the written request of the Required Lenders shall), notwithstanding the provision of section, Subject to the terms and conditions of the Applicable Order, during the continuance of any Event of Default, the Administrative Agent may, and, at the request of the Required Lenders, shall, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, do each of the following: (a) declare all or any portion of the Commitments terminated, whereupon the Commitments shall immediately be reduced by such portion or, in the case of a termination in whole, shall terminate together with any obligation any Lender may have hereunder to make any Loan, (b) declare immediately due and payable all or part of any Obligation (including any accrued but unpaid interest thereon), whereupon the same shall become immediately due and payable, without presentment, demand, protest or further notice or other requirements of any kind, all of which are hereby expressly waived by the Borrower, (c) reduce the Commitment from time to time; (d) direct the Borrower to sell or otherwise dispose of any or all of the Collateral on terms and conditions acceptable to the Administrative Agent and the Lenders pursuant to Sections 363, 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct the Borrower to assume and assign any lease or executory contract included in the Collateral to the Administrative Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code), (e) enter onto the premises of the Borrower in connection with an orderly liquidation of the Collateral, or (f) exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the Code; and pursuant to the Interim Order and the Final Order, the automatic stay of Section 362 of the Bankruptcy Code subject to and in accordance with the terms of the Interim Order or the Final Order, as applicable, (i) terminate the Incremental Revolving Loan Commitments with respect to further Incremental Revolving Loans or the incurrence of further L/C Obligations; (ii) reduce the Incremental Revolving Loan Commitments from time to time; (iii) declare all or any portion of the Obligations, including all or any portion of any Loan to be forthwith due and payable, and require that the L/C Obligations be cash collateralized in the manner set forth in Section 9.3 in accordance with the terms of the Interim Order or the Final Order; (iv) terminate the consent by the Lenders to the use of cash collateral by the Loan Parties or (v) exercise any rights and remedies provided to Administrative Agent under the Loan Documents, the Interim Order or the Final Order or at law or equity. shall be modified and vacated to permit the Administrative

Agent and Lenders to exercise their remedies under this Agreement and the Loan Documents, without further notice, application or motion to, hearing before, or order from, the Bankruptcy Court. Notwithstanding anything to the contrary contained herein, the Administrative Agent shall be permitted to exercise any remedy in the nature of a liquidation of, or foreclosure on, any interest of the Borrower in the Collateral only upon five Business Days' prior written notice to the Borrower and counsel approved by the Bankruptcy Court for the Committee and the United States Trustee. Upon the occurrence of an Event of Default and the exercise by the Administrative Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, the Borrower shall reasonably assist the Administrative Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are acceptable to the Administrative Agent and Required Lenders.

Section 9.3 Actions in Respect of Letters of Credit Waivers by Borrower.—At any time (i) upon the Termination Date, (ii) after the Termination Date when the aggregate funds on deposit in L/C Cash Collateral Accounts shall be less than 105% of the L/C Obligations for all Letters of Credit at such time and (iii) as required by Section 2.12, the Borrower shall pay to the Administrative Agent in immediately available funds at the Administrative Agent's office referred to in Section 11.11, for deposit in a L/C Cash Collateral Account, the amount required so that, after such payment, the aggregate funds on deposit in the L/C Cash Collateral Accounts equals or exceeds 105% of the L/C Obligations for all Letters of Credit at such time (not to exceed, in the case of clause (iii) above, the payment to be applied pursuant to Section 2.12 to provide cash collateral for Letters of Credit). Except as otherwise provided for in this Agreement, the Interim Order, the Final Order or in any other Loan Documents or by applicable law, the Borrower waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the Administrative Agent on which the Borrower may in any way be liable, and hereby ratifies and confirms whatever the Administrative Agent may do in this regard, (b) all rights to notice and a hearing prior to either the Administrative Agent taking possession or control of, or to either the Administrative Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing such the Administrative Agent to exercise any of its remedies, and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

ARTICLE 10 THE ADMINISTRATIVE AGENT

Section 10.1 Appointment and Duties. (a) Appointment of the Administrative Agent. Each Lender and each L/C Issuer hereby appoints GE Capital OCM POF IV DS Investments Ltd. (together with any successor Administrative Agent pursuant to Section 10.9) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Group Member, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto. Without limitation of the foregoing, each Lender acknowledges that it has been provided with a copy of the Interim Order and each Lender authorizes the Administrative Agent to consent to an Interim Order in substantially similar form and to a Final Order to be negotiated between the Borrower, the Administrative Agent and the Committee. OCM POF IV DS Investments

Ltd. accepts its appointment as Administrative Agent hereunder with the express understanding of all parties hereto that it is OM POF IV DS Investments Ltd.'s intent to resign in such capacity as soon as an acceptable successor can be identified.

(b) Duties as Collateral and Disbursing Agent. Without limiting the generality of clause (a) above, the Administrative Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders and ~~L/C Issuers~~), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders and ~~the L/C Issuers~~ with respect to all payments and collections arising in connection with the Loan Documents (including in any bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Secured Party is hereby authorized to make such payment to the Administrative Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of the Secured Parties with respect to any Obligation in any proceeding described in Section 9.1(e)(ii) or any other bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Secured Party), (iii) act as collateral agent for each Secured Party for purposes of the perfection of all Liens created by such agreements and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to the Administrative Agent and the other Secured Parties with respect to the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that the Administrative Agent hereby appoints, authorizes and directs each Lender and ~~L/C Issuer~~ to act as collateral sub-agent for the Administrative Agent, the Lenders and ~~the L/C Issuers~~ for purposes of the perfection of all Liens with respect to the Collateral, including any deposit account maintained by ~~at the~~ Borrower with, and cash and Cash Equivalents held by, such Lender ~~or L/C Issuer~~, and may further authorize and direct the Lenders and ~~the L/C Issuers~~ to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to the Administrative Agent, and each Lender and ~~L/C Issuer~~ hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

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

Section 10.2 Binding Effect. Each Lender and ~~each L/C Issuer~~ agrees that (i) any action taken by the Administrative Agent or the Required Lenders (or, if expressly required hereby, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by the Administrative Agent in reliance upon the instructions of Required Lenders (or, where so

required, such greater proportion) and (iii) the exercise by the Administrative Agent or the Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Secured Parties.

Section 10.3 Use of Discretion. (a) No Action without Instructions. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit to take (i) under any Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

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

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

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

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

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

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

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

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

and, for each of the items set forth in clauses (i) through (iv) above, each Lender, ~~L/C Issuer~~, and the Borrower hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent based thereon.

Section 10.6 The Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock and Stock Equivalents of, engage in any kind of business with, the Borrower or Affiliate thereof as though it were not acting as the Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Required Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

Section 10.7 Lender Credit Decision. Each Lender and ~~each L/C Issuer~~ acknowledges that it shall, independently and without reliance upon the Administrative Agent, any Lender or ~~L/C Issuer~~ or any of their Related Persons or upon any document (including the Disclosure Documents) solely or in part because such document was transmitted by the Administrative Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of the Borrower and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by the Administrative Agent to the Lenders or

~~L/C Issuers~~, the Administrative Agent shall not have any duty or responsibility to provide any Lender ~~or L/C Issuer~~ with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of the Borrower or any Affiliate of the Borrower that may come in to the possession of the Administrative Agent or any of its Related Persons.

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

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

Section 10.9 Resignation of ~~the Administrative Agent or L/C Issuer~~. (a) The Administrative Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower, effective on the date set forth in such notice or, if not such date is set forth therein, upon the date such notice shall be effective. If the Administrative Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent. If, within 3015 days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from (x) among the Lenders, (y) any bank with an office in New York, New York, or (z) any Affiliate of any such bank. Each appointment under this clause (ax), (y) or (z) shall be subject to the prior consent of the Borrower, which may not be unreasonably withheld but shall not be required during the continuance of a Default.

(b) Effective immediately upon its resignation, (i) the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents, (ii) the Lenders shall assume and perform all of the duties of the Administrative Agent until a successor Administrative Agent shall have accepted a valid appointment hereunder, (iii) the retiring Administrative Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Administrative Agent was, or because such Administrative Agent had been, validly acting as the Administrative Agent under the Loan Documents and

(iv) subject to its rights under Section 10.3, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as the Administrative Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as the Administrative Agent, a successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent under the Loan Documents.

~~(e) Any L/C Issuer may resign at any time by delivering notice of such resignation to the Administrative Agent, effective on the date set forth in such notice or, if no such date is set forth therein, on the date such notice shall be effective. Upon such resignation, the L/C Issuer shall remain an L/C Issuer and shall retain its rights and obligations in its capacity as such (other than any obligation to Issue Letters of Credit but including the right to receive fees or to have Lenders participate in any L/C Reimbursement Obligation thereof) with respect to Letters of Credit issued by such L/C Issuer prior to the date of such resignation and shall otherwise be discharged from all other duties and obligations under the Loan Documents.~~

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

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

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is Sold by the Borrower in a Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to Section 7.10 after giving effect to such Sale have been granted, ~~(ii) any property subject to a Lien permitted hereunder in reliance upon Section 8.2(d) or (e) and (iii and (ii)~~ all of the Collateral and the Borrower, upon (A) termination of the Commitments, (B) payment and satisfaction in full of all Loans, ~~all L/C Reimbursement Obligations and all other Obligations (other than contingent indemnification Obligations not relating to Letters of Credit and as to which no underlying claim has arisen or been asserted) that the Administrative Agent has been notified in writing are then due and payable by the holder of such Obligation, and (C) deposit of cash collateral with respect to all contingent Obligations (or, in the case of any L/C Obligation, deposit of funds in the applicable L/C Cash Collateral Account equal to at least 105% of such L/C Obligation, or to the extent acceptable to the L/C Issuers, the issuance of back to back letters of credit issued by issuers and in form and substance reasonably satisfactory in all respects to the applicable L/C Issuer and the Administrative Agent and in an amount equal to 105% of each outstanding Letter of Credit), in amounts and on terms and conditions and with parties reasonably satisfactory to the Administrative Agent.~~

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

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

ARTICLE 11 MISCELLANEOUS

Section 11.1 Amendments, Waivers, Etc. (a) No amendment or waiver of any provision of any Loan Document (other than the Fee Letter, ~~the Control Agreements, the L/C Reimbursement Agreements and the Secured Hedging~~ Control Agreements) and no consent to any departure by the Borrower therefrom shall be effective unless the same shall be in writing and signed (1) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Secured Parties or extending an existing Lien over additional property, by the Administrative Agent and the Borrower, (2) in the case of any other waiver or consent, by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and (3) in the case of any other amendment, by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower; provided, however, that no amendment, consent or waiver described in clause (2) or (3) above shall, unless in writing and signed by each Lender directly affected thereby (or by the Administrative Agent with the consent of such Lender), in addition to any other Person the signature of which is otherwise required pursuant to any Loan Document, do any of the following:

- (i) waive any condition specified in Section 3.1, except any condition referring to any other provision of any Loan Document;
- (ii) increase the Commitment of such Lender or subject such Lender to any additional obligation; provided, that increases in the aggregate amount of the Commitments shall only require the consent of the Required Lenders and each Lender providing such increase in the Commitments;

(iii) reduce (including through release, forgiveness, assignment or otherwise) (A) the principal amount of, the interest rate on, or any obligation of the Borrower to repay (whether or not on a fixed date), any outstanding Loan owing to such Lender, or (B) any fee or accrued interest payable to such Lender ~~or (C) any L/C Reimbursement Obligation or any obligation of the Borrower to repay (whether or not on a fixed date) any L/C Reimbursement Obligation;~~ provided, however, that this clause (iii) does not apply to any change to any provision increasing any interest rate or fee during the continuance of an Event of Default or to any payment of any such increase;

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

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

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

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

and provided, further, that (x) no amendment, waiver or consent shall affect the rights or duties under any Loan Document of, or any payment to, the Administrative Agent (or otherwise modify any provision of Article X or the application thereof), ~~the Swingline Lender, any L/C Issuer or any SPV that has been granted an option pursuant to Section 11.2(f) unless in writing and signed by the Administrative Agent, the Swingline Lender, such L/C Issuer or, as the case may be, such SPV in addition to any signature otherwise required, and~~ (y) the consent of the Borrower shall not be required to change any order of priority set forth in Section 2.12 and (z) ~~no amendment of the definition of "Permitted Overadvance Amount" shall be effective unless signed by the Supermajority Lenders. No amendment, modification or waiver of this Agreement or any Loan Document altering the ratable treatment of Obligations arising under Secured Hedging Agreement resulting in such Obligations being junior in right of payment to principal of the Loans or resulting in Obligations owing to any Secured Hedging Counterparty being unsecured (other than releases of Liens in accordance with the terms hereof), in each case in a manner adverse to any Secured Hedging Counterparty, shall be effective without the written consent of such Secured Hedging Counterparty or, in the case of a Secured Hedging Agreement provided or arranged by the Administrative Agent or an Affiliate thereof, the Administrative Agent.~~ 2.12.

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

Section 11.2 Assignments and Participations; Binding Effect. (a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have been notified by each Lender and L/C Issuer that such Lender or L/C Issuer has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, the Borrower (in each case except for Article X), the Administrative Agent, and each Lender and L/C Issuer and, to the extent provided in Section 10.11, each other Indemnitee and Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document (including in Section 10.9), ~~none of~~ neither the Borrower, ~~any L/C Issuer or~~ nor the Administrative Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Loans and Letters of Credit) to (i) any existing Lender, (ii) any Affiliate or Approved Fund of any existing Lender or (iii) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent and, as long as no Event of Default is continuing, the Borrower; provided, however, that (x) such Sales must be ratable among the obligations owing to and owed by such Lender with respect to the Revolving Credit Facility and (y) the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Loans, and Commitments and L/C Obligations subject to any such Sale shall be in a minimum amount of \$5,000,000, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in the Revolving Credit Facility or is made with the prior consent of the Borrower and the Administrative Agent.

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to the Administrative Agent an Assignment via an electronic settlement system designated by the Administrative Agent (or if previously agreed with the Administrative Agent, via a manual execution and delivery of the assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to the Administrative Agent), any tax forms required to be delivered pursuant to Section 2.17(f) and payment of an assignment fee in the amount of \$3,500, provided that (1) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (2) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 shall be due in connection with such Sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such assignment is made in accordance with Section 11.2(b)(iii), upon the Administrative Agent (and the Borrower, if applicable) consenting to such Assignment, from and after the effective date specified in such Assignment, the Administrative Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

(d) Effectiveness. Subject to the recording of an Assignment by the Administrative Agent in the Register pursuant to Section 2.14(b), (i) the assignee thereunder shall become a party hereto and, to the extent that rights and obligations under the Loan Documents have been assigned to such assignee pursuant to such Assignment, shall have the rights and obligations of a Lender, (ii) any applicable Note shall be transferred to such assignee through such entry and (iii) the assignor thereunder shall, to the extent that rights and obligations under this Agreement have been assigned by it pursuant to such Assignment, relinquish its rights (except for those surviving the termination of the Commitments and the payment in full of the Obligations) and be released from its obligations under the Loan Documents, other than those

relating to events or circumstances occurring prior to such assignment (and, in the case of an Assignment covering all or the remaining portion of an assigning Lender's rights and obligations under the Loan Documents, such Lender shall cease to be a party hereto except that each Lender agrees to remain bound by Article X, Section 11.8 (Right of Setoff) and Section 11.9 (Sharing of Payments) to the extent provided in Section 10.11 (Additional Secured Parties)).

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

(f) Participants and SPVs. In addition to the other rights provided in this Section 11.2, each Lender may, (x) with notice to the Administrative Agent, grant to an SPV the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder (and the exercise of such option by such SPV and the making of Loans pursuant thereto shall satisfy the obligation of such Lender to make such Loans hereunder) and such SPV may assign to such Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from the Administrative Agent or the Borrower, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Revolving Loans and Letters of Credit); provided, however, that, whether as a result of any term of any Loan Document or of such grant or participation, (i) no such SPV or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of the Borrower and the Secured Parties towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPV shall be entitled to the benefit of Sections 2.16 (Breakage Costs; Increased Costs; Capital Requirements) and 2.17 (Taxes), but only to the extent such participant or SPV delivers the tax forms such Lender is required to collect pursuant to Section 2.17(f) and then only to the extent of any amount to which such Lender would be entitled in the absence of any such grant or participation and (B) each such SPV may receive other payments that would otherwise be made to such Lender with respect to Loans funded by such SPV to the extent provided in the applicable option agreement and set forth in a notice provided to the Administrative Agent by such SPV and such Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPV or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPV or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (iii) and (iv) of Section 11.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in Section 11.1(a)(v) (or amendments, consents and waivers with respect to Section 10.10 to release all or substantially all of the Collateral). No party hereto shall institute against any SPV grantee of

an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPV; provided, however, that each Lender having designated an SPV as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to get reimbursed by such SPV for any such Liability). The agreement in the preceding sentence shall survive the termination of the Commitments and the payment in full of the Obligations.

Section 11.3 Costs and Expenses. Any action taken by the Borrower under or with respect to any Loan Document, even if required under any Loan Document or at the request of any Secured Party, shall be at the expense of the Borrower, and no Secured Party shall be required under any Loan Document to reimburse the Borrower or Group Member therefor except as expressly provided therein. In addition, the Borrower agrees to pay or reimburse upon demand (a) the Administrative Agent for all reasonable out-of-pocket costs and expenses incurred by it or any of its Related Persons in connection with the negotiation, preparation and filing and/or recordation of the Loan Documents, the Interim Order and the Final Order, and incurred in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein (including periodic audits and appraisals in connection therewith and environmental audits and assessments), in each case including the reasonable fees, charges and disbursements of legal counsel to the Administrative Agent or such Related Persons, reasonable fees, costs and expenses incurred in connection with Intralinks® or any other E-System and reasonable fees, charges and disbursements of the auditors, appraisers, printers and other of their Related Persons retained by or on behalf of any of them or any of their Related Persons, (b) the Administrative Agent for all reasonable costs and expenses incurred by it or any of its Related Persons in connection with internal audit reviews, field examinations and Collateral examinations (which shall be reimbursed, in addition to the reasonable out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by the Administrative Agent for its examiners) and (c) each of the Administrative Agent, its Related Persons, and each Lender and L/C Issuer for all costs and expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out", (ii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or, (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Group Member, Loan Document, Obligation or Related Transaction (or the response to and preparation for any subpoena or request for document production relating thereto), ~~including fees and disbursements of counsel, limited, solely in the case of Lenders other than the Administrative Agent~~ and (iv) the preparation and review of pleadings, documents and reports related to the Chapter 11 Case and any subsequent case under Chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Chapter 11 Case and any subsequent case under Chapter 7 of the Bankruptcy Code, and general monitoring of the Chapter 11 Case and any subsequent case under Chapter 7 of the Bankruptcy Code; provided, that in the case of reimbursement of counsel for the Lenders other than an Agent, such reimbursement shall be limited to one legal counsel (unless there is an actual or perceived conflict of interest in which case each such Lender affected thereby may retain such counsel) and one counsel in each other relevant local jurisdiction.

Section 11.4 Indemnities. (a) The Borrower agrees to indemnify, hold harmless and defend the Administrative Agent, each Lender, each L/C Issuer, each Secured Hedging Counterparty, each

Person that each L/C Issuer causes to Issue Letters of Credit hereunder and each of their respective Related Persons (each such Person being an "Indemnatee") from and against all Liabilities (including brokerage commissions, fees and other compensation) that may be imposed on, incurred by or asserted against any such Indemnatee in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, ~~any Related Document,~~ any Disclosure Document, any Obligation (or the repayment thereof), ~~any Letter of Credit,~~ the use or intended use of the proceeds of any Loan ~~or the use of any Letter of Credit,~~ any Related Transaction, or any securities filing of, or with respect to, any Group Member, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Group Member or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E-Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnatee or any of its Related Persons, any holders of Securities or creditors (and including attorneys' fees in any case), whether or not any such Indemnatee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise, or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the "Indemnified Matters"); provided, however, that the Borrower shall not have any liability under this Section 11.4 to any Indemnatee with respect to any Indemnified Matter, and no Indemnatee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), to the extent such liability has resulted primarily from the gross negligence, bad faith or willful misconduct of such Indemnatee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Furthermore, the Borrower waives and agrees not to assert against any Indemnatee any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Without limiting the foregoing, "Indemnified Matters" includes all Environmental Liabilities, including those arising from, or otherwise involving, any property of any Related Person or any actual, alleged or prospective damage to property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property or natural resource or any property on or, to the extent caused or alleged to have been caused by any Related Person, contiguous to any real property of any Related Person, whether or not, with respect to any such Environmental Liabilities, any Indemnatee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Related Person or the owner, lessee or operator of any property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred solely following foreclosure by any Secured Party or following any Secured Party having become the successor-in-interest to the Borrower and (ii) are attributable solely to acts of such Indemnatee.

Section 11.5 Survival. Any indemnification or other protection provided to any Indemnatee pursuant to any Loan Document (including pursuant to Section 2.17 (Taxes), Section 2.16 (Breakage Costs; Increased Costs; Capital Requirements), Article X (The Administrative Agent), Section 11.3 (Costs and Expenses), Section 11.4 (Indemnities) or this Section 11.5) and all representations and warranties made in any Loan Document shall (A) survive the termination of the Commitments and the payment in full of other Obligations and (B) inure to the benefit of any Person that at any time held a right thereunder (as an Indemnatee or otherwise) and, thereafter, its successors and permitted assigns.

Section 11.6 Limitation of Liability for Certain Damages. In no event shall any Indemnatee be liable on any theory of liability for any special, indirect, consequential or punitive damages

(including any loss of profits, business or anticipated savings). The Borrower hereby waives, releases and agrees not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

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

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

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

Section 11.10 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any property in favor of the Borrower or any other party or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from the Borrower, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

Section 11.11 Notices. (a) Addresses. All notices, demands, requests, directions and other communications required or expressly authorized to be made by this Agreement shall, whether or not specified to be in writing but unless otherwise expressly specified to be given by any other means, be given in writing and (i) addressed to (A) ~~if to the Borrower, to 7777 Washington Village Drive, Suite 130, Dayton, Ohio 45459, Attention: Edward J. Puisis, Fax: (937) 428-9115, with copy to Latham & Watkins, 885 Third Avenue, Suite 1000, New York, New York 10022, Attention: Kirk Davenport, Fax: (212) 751-4864,~~ (B) ~~if to the Administrative Agent or the Swingline Lender, to General Electric Capital Corporation, 401 Merritt 7, 1st Floor, Norwalk, CT 06851, CFN [8845], Attention: Stephanie Kane, Fax: [], with copy to King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036, Attention: Robert S. Finley, Fax: (212) 556-2222 and~~ (C) such Person at the address specified on Schedule 11.11 attached hereto, or otherwise to the party to be notified at its address on the signature page of any applicable Assignment, (ii) posted to Intralinks® (to the extent such system is available and set up by or at the direction of the Administrative Agent prior to posting) in an appropriate location by uploading such notice, demand, request, direction or other communication to www.intralinks.com, faxing it to 866-545-6600 with an appropriate bar-coded fax coversheet or using such other means of posting to Intralinks® as may be available and reasonably acceptable to the Administrative Agent prior to such posting, (iii) posted to any other E-System set up by or at the direction of the Administrative Agent in an appropriate location or (iv) addressed to such other address as shall be notified in writing (A) in the case of the Borrower, and the Administrative Agent ~~and the Swingline Lender,~~ to the other parties hereto and (B) in the case of all other parties, to the Borrower and the Administrative Agent. Transmission by electronic mail (including E-Fax, even if transmitted to the fax numbers set forth in clause (i) above) shall not be sufficient or effective to transmit any such notice under this clause (a) unless such transmission is an available means to post to any E-System.

(b) Effectiveness. All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one Business Day after delivery to such courier service, (iii) if delivered by mail, when deposited in the mails, (iv) if delivered by facsimile (other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the date of such posting in an appropriate location and the date access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System; provided, however, that no communications to the Administrative Agent pursuant to Article II or Article X shall be effective until received by the Administrative Agent.

Section 11.12 Electronic Transmissions. (a) Authorization. Subject to the provisions of Section 11.11(a), each of the Administrative Agent, the Borrower, the Lenders, ~~the L/C Issuers~~ and each of their Related Persons is authorized (but not required) to transmit, post or otherwise make or communicate,

in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each of the Borrower and each other Group Member and each Secured Party hereby acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) Signatures. Subject to the provisions of Section 11.11(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a "signature" and (C) each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which each Secured Party and the Borrower may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party's or beneficiary's right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 11.11 and this Section 11.12, separate terms and conditions posted or referenced in such E-System and related Contractual Obligations executed by Secured Parties and Group Members in connection with the use of such E-System.

(d) Limitation of Liability. All E-Systems and Electronic Transmissions shall be provided "as is" and "as available". None of the Administrative Agent or any of its Related Persons warrants the accuracy, adequacy or completeness of any E-Systems or Electronic Transmission, and each disclaims all liability for errors or omissions therein. No Warranty of any kind is made by the Administrative Agent or any of its Related Persons in connection with any E-Systems or Electronic Communication, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. ~~The~~ Each of the Borrower and each Secured Party agrees that the Administrative Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

Section 11.13 Governing Law. ~~This Agreement, each other Loan Document that does not expressly set forth its applicable law, and the rights and obligations of the parties hereto and thereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.~~ EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THE LOAN DOCUMENTS AND THE OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE

AND PERFORMED IN THAT STATE) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA (INCLUDING THE BANKRUPTCY CODE).

Section 11.14 Jurisdiction. ~~-(a) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document may be brought in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States for the Southern District of New York and, by execution and delivery of this Agreement, the Borrower hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.~~ **THE BORROWER HEREBY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT THE ADMINISTRATIVE AGENT, THE LENDERS AND THE BORROWER ACKNOWLEDGE THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE ADMINISTRATIVE AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE ADMINISTRATIVE AGENT. THE BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND THE BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. THE BORROWER HEREBY WAIVES TO THE MAXIMUM EXTENT PERMITTED BY LAW PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO IT AT THE ADDRESS SET FORTH IN SCHEDULE 11.11 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF ITS ACTUAL RECEIPT THEREOF OR THREE (3) BUSINESS DAYS AFTER DEPOSIT IN THE UNITED STATES MAELS, PROPER POSTAGE PREPAID AND CERTIFIED MAIL RETURN RECEIPT REQUESTED.**

(b) ~~Service of Process.~~ The Borrower hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of the Borrower specified in Section 11.11 (and shall be effective when such mailing shall be effective, as provided therein). The Borrower agrees that a final judgment in any such action or proceeding

shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

~~(c) — Non Exclusive Jurisdiction. Nothing contained in this Section 11.14 shall affect the right of the Administrative Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against the Borrower in any other jurisdiction.~~

Section 11.15 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREIN OR RELATED THERETO (WHETHER FOUNDED IN CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PERSON OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS, AS APPLICABLE, BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

Section 11.16 Severability. Any provision of any Loan Document being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of any Loan Document or any part of such provision in any other jurisdiction.

Section 11.17 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

Section 11.18 Entire Agreement. The Loan Documents embody the entire agreement of the parties and supersede all prior agreements and understandings relating to the subject matter thereof and any prior letter of interest, commitment letter, fee letter, confidentiality and similar agreements involving the Borrower and any of the Administrative Agent, any Lender or any L/C Issuer or any of their respective Affiliates relating to a financing of substantially similar form, purpose or effect. In the event of any conflict between the terms of this Agreement and any other Loan Document, the terms of this Agreement shall govern (unless such terms of such other Loan Documents are necessary to comply with applicable Requirements of Law, in which case such terms shall govern to the extent necessary to comply therewith). **NOTWITHSTANDING THE FOREGOING, IF ANY PROVISION IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT CONFLICTS WITH ANY PROVISION IN THE INTERIM ORDER OR FINAL ORDER, THE PROVISION IN THE INTERIM ORDER OR FINAL ORDER SHALL GOVERN AND CONTROL.**

Section 11.19 Use of Name. The Borrower agrees that it shall not, and none of its Affiliates shall, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of the Securities of the Borrower) using the name,

logo or otherwise referring to GE Capital or of any of its Affiliates, the Loan Documents or any transaction contemplated therein to which the Secured Parties are party without at least 2 Business Days' prior notice to GE Capital and without the prior consent of GE Capital except to the extent required to do so under applicable Requirements of Law and then, only after consulting with GE Capital prior thereto.

Section 11.20 Non-Public Information; Confidentiality. (a) Each Lender and ~~L/C Issuer~~ and the Administrative Agent acknowledges and agrees that it may receive material non-public information hereunder concerning the Borrower and its Affiliates and Securities and agrees to use such information in compliance with all relevant policies, procedures and Contractual Obligations and applicable Requirements of Laws (including United States federal and state security laws and regulations).

(b) Each Lender, ~~L/C Issuer~~ and the Administrative Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document and designated in writing by the Borrower as confidential, except that such information may be disclosed (i) with the Borrower's consent, (ii) to Related Persons of such Lender, ~~L/C Issuer~~ or the Administrative Agent, as the case may be, ~~or to any Person that any L/C Issuer causes to issue Letters of Credit hereunder, that are advised of the confidential nature of such information and are instructed to keep such information confidential,~~ (iii) to the extent such information presently is or hereafter becomes available to such Lender, ~~L/C Issuer~~ or the Administrative Agent, as the case may be, on a non-confidential basis from a source other than the Borrower, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority; provided that, unless prohibited by applicable Requirements of Law or by the rules governing the process requiring such disclosure, (x) it will promptly notify the Borrower of the existence, terms and circumstances surrounding such requirement, (y) it will consult with the Borrower on the advisability of taking legally available steps to resist or narrow such requirement, and (z) it will identify to the Borrower any such information which is legally required to be disclosed, (v) to the extent necessary or customary for inclusion in league table measurements or in any tombstone or other advertising materials (and the Borrower consents's consent to the publication of such tombstone or other advertising materials by the Administrative Agent, any Lender, ~~any L/C Issuer~~ or any of their Related Persons), (vi) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency in each case to the extent required by such examiner, association, organization or agency in connection with the administration of the Loans, regulatory examinations or ratings or proposed rating of the Loans or otherwise to the extent consisting of general portfolio information that does not identify the Borrower or any of ~~their~~its Subsidiaries, (vii) to current or prospective assignees, SPVs grantees of any option described in Section 11.2(f) or participants, ~~direct or contractual counterparties to any Hedging Agreement permitted hereunder and to their respective Related Persons,~~ in each case to the extent such assignees, participants, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 11.20 and (viii) in connection with the exercise of any remedy under any Loan Document. In the event of any conflict between the terms of this Section 11.20 and those of any other Contractual Obligation entered into with the Borrower (whether or not a Loan Document), the terms of this Section 11.20 shall govern.

Section 11.21 Patriot Act Notice. Each Lender subject to the USA Patriot Act of 2001 (31 U.S.C. 5318 et seq.) hereby notifies the Borrower that, pursuant to Section 326 thereof, it is required to obtain, verify and record information that identifies the Borrower, including the name and address of the Borrower and other information allowing such Lender to identify the Borrower in accordance with such Act.

Section 11.22 Parties Including Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents, and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon the Borrower, the estate of the Borrower, and any trustee, other estate representative or any successor in interest of the Borrower in the Chapter 11 Case or any subsequent case or proceeding commenced under eChapter 7 of the Bankruptcy Code or similar insolvency laws, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Administrative Agent and Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of the Borrower to a case under eChapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Administrative Agent file financing statements or otherwise perfect its Liens under applicable law. The Borrower may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Administrative Agent and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by the Borrower without the prior express written consent of the Administrative Agent and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of the Borrower, the Administrative Agent and Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

Section 11.23 Pre-Petition Loan Documents. ~~Borrower hereby agrees that (i) this Agreement is separate and distinct from the Pre-Petition Credit Agreement and (ii) the Pre-Petition Credit Agreement is in full force and effect. Borrower further agrees that by entering into this Agreement, Lenders do not waive any Default or Event of Default under the Pre-Petition Loan Documents or any of their Liens, claims, priorities, rights and remedies thereunder.~~

[SIGNATURE PAGES FOLLOW]

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

DAYTON SUPERIOR CORPORATION,
as the Borrower, debtor and
debtor in possession

By: _____
Name:
Title:

DAYTON SUPERIOR CANADA LTD.,
as a Group Member (as to Section 11.12)

By: _____
Name:
Title:

~~GENERAL ELECTRIC CAPITAL~~
CORPORATION, as Administrative Agent, L/C
Issuer, Swingline Lender and Lender

By: _____
Name:
Title:

K&E LEGAL:14458371.9
NY1523297.2

K&E LEGAL:14487951.1

SENIOR SECURED DEBTOR-IN-POSSESSION
REVOLVING CREDIT AGREEMENT
(DAYTON SUPERIOR CORPORATION)

[ADD ADMINISTRATIVE AGENT BLOCK]

AS LENDER:

OCM POF IV DS INVESTMENTS LTD.

By:

Its:

K&E LEGAL:14458371.9
NY11523297.2

K&E LEGAL:14487951.1

SENIOR SECURED DEBTOR-IN-POSSESSION
REVOLVING CREDIT AGREEMENT
[DAYTON SUPERIOR CORPORATION]

SCHEDULE I
COMMITMENTS

<u>Lender</u>	<u>Initial Loan Commitment</u>
General Electric Capital Corporation	\$[101,722,762.97]
<u>Lender</u>	<u>Incremental Revolving Loan Commitment</u>
General Electric Capital Corporation <u>OCM POF IV DS</u> <u>Investments Ltd.</u>	Part A — \$[54,353,129.53] Part B — \$[8,924,107.50] <u>\$55,000,000.00</u>
Total	\$165,000,000.00 <u>\$55,000,000.00</u>

K&E LEGAL:14458371.9
NY11523297.2

K&E LEGAL:14487951.1

SENIOR SECURED DEBTOR-IN-POSSESSION
REVOLVING CREDIT AGREEMENT
DAYTON SUPERIOR CORPORATION

SCHEDULE H

**DAYTON SUPERIOR CORPORATION
PRE-PETITION LETTERS OF CREDIT**

Beneficiary	LOC #	Purpose	Type	Initial Issue Date	Expiration Date	Original LOC Amount
TOTALS						

\$

K&E LEGAL:14458371.9
NY1523297.2

K&E LEGAL:14487951.1

SENIOR SECURED DEBTOR-IN-POSSESSION
REVOLVING CREDIT AGREEMENT
DAYTON SUPERIOR CORPORATION

Document comparison done by Workshare DeltaView on Monday, April 20, 2009
1:35:38 AM

Input	
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Document 2	interwovenSite://KEDMS/LEGAL/14458371/9
Rendering set	Basic K&E

Legend	
Insertion	
Deletion	
<i>Moved from</i>	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics	
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Deletions	997
Moved from	30
Moved to	30
Style change	0
Format changed	0
Total changes	1722

Exhibit B

Summary Comparison of Proposed DIP Financing

	GE Capital	Ad Hoc Group of Bondholders
New Money	\$54.35M reduced by Block and Reserves	\$55.0M
Roll-up of Pre-Petition	\$110.65M ⁽¹⁾	None
Total DIP	\$165.0M which could be reduced by Borrowing Base reductions and any Limit on New Money	\$55.0M
Interim Amount	\$35 million plus the amount of Roll-Up	Availability as needed under the DIP budget
Block	\$5M until 7/31, \$10M thereafter until 10/15 and \$15M thereafter	No Block
Reserves	Agent's discretion	No Reserves
Letters of Credit	\$25M total, including \$8.9M existing	None ⁽²⁾
Lien on ABL Collateral	Superpriority to all existing liens	Pari passu lien with revolving lender
Lien on Non-ABL Collateral (all other assets)	Junior lien to the term loan lenders' lien on term lender priority collateral	Junior lien to the term loan lenders' lien on term lender priority collateral; Pari Passu lien to revolver lender's liens on term lender priority collateral
Prof. Fee Carveout	\$1.0M	\$2.0M
Maturity	12 Months	12 Months
Interest:		
Interest Rate	L + 1200bps	L + 450bps
LIBOR Floor	3.25%	3.0%
Current Effective Rate	15.25% on the fully drawn facility up to \$165 million	7.5% on up to \$55 million
Fees:		
Letter of Credit	1200 bps	N/A
Unused Line	1.00%	0.375%
Commitment/ Funding Fee	Total fees of \$6.6M consisting of: \$1.65M Commitment Fee plus 4.0% Facility Fee paid at Interim and Final Orders (net of Commitment Fee)	Total fees of \$1.65M consisting of: 3.00% Front-End Purchase Price Adjustment (1.5% on total plus 1.5% on interim amount available at Interim Order, plus 1.5% on remainder at Final Order)
Administrative	\$200,000	\$150,000
Condition to Borrowing:	Includes no MAE since December 31, 2008, "other than changes of the type that customarily occurs as a result" of the Chapter 11 Proceeding.	Includes no MAE since Petition Date other than a change of the type that customarily occurs as a result of a Chapter 11 proceeding or as a result of the continuation of circumstances that gave rise to the filing.
Covenants:		
Milestones	Either: (1) 45 days for purchase agreement and POR/DS filed < 90 days, POR confirmed < 155 days and POR consummated in 185 days OR (2) 45 days file bid procedures motion and 60 days order approving bid procedures, 105 days order approving sale and 120 days consummate sale	DS approved < 120 days: POR confirmation < 165 days
Financial Covenants ⁽²⁾	Requires the Debtor to achieve 85% of budgeted EBITDA, with compliance measured each month on a cumulative basis from the Petition Date; no add-backs for Restructuring Costs or business optimization expenses	EBITDA compliance set at 90% of budget, measured on a rolling basis for the prior 12 months; add-backs permitted for Restructuring Costs and business optimization expenses as agreed
Financial Reporting	Borrowing Base and Related Reports Required	No such reports required
Rejection of Contracts	Requires Administrative Agent approval to assume or reject any material agreement or any agreement the rejection of which would have a negative effect on value of collateral or cause MAE	No such limit.
Limit on Expenses	Limits key employee incentive expenses, retention payments, severance payments, utility deposits and critical vendor payments	No such limit.
Events of Default	\$2.5M cross-default; in event of cross-default, Debtor required engagement of operational consultant and investment banker	\$5M cross-default; no requirement for engagement of operational consultant or investment banker
Adequate Protection	Budget does not allow for payments to Term Lenders for interest, fees and expenses	Willing to allow adequate protection payments of current interest, fees and expenses to all revolving loan facility and term loan facility

Notes:

(1) Includes Letters of Credit of \$8.9M.

(2) The GECC EBITDA provides significantly less cushion because it is a cumulative test beginning at the petition date, vs. the Oaktree test which is based on LTM EBITDA. As an example, 15% of May EBITDA is a much smaller cushion than 10% of the LTM EBITDA at the end of May. Also, the GECC Minimum Cumulative EBITDA has been set off an EBITDA number that excludes restructuring expenses, yet the definition of EBITDA does not add restructuring charges back to net income. If this is the case, the company has almost no chance of meeting this covenant.

(3) While letters of credit are unavailable, borrowing under the Bondholders' proposed DIP is less than letters of credit issuance under GE's proposed DIP.

Exhibit C

\$165,000,000

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

Dated as of April [], 2009

among

DAYTON SUPERIOR CORPORATION, AS THE DEBTOR AND DEBTOR-IN-POSSESSION
THE LENDERS AND L/C ISSUERS PARTY HERETO

and

GENERAL ELECTRIC CAPITAL CORPORATION,
AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT

♦ ♦ ♦

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

SENIOR SECURED PRIMING AND
SUPERPRIORITY DEBTOR-IN-POSSESSION
REVOLVING CREDIT AGREEMENT
[DAYTON SUPERIOR CORPORATION]

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Exhibit B	-	Form of Note
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Exhibit F	-	Form of Notice of Conversion or Continuation
Exhibit G	-	Form of Compliance Certificate
Exhibit H	-	Form of Guaranty and Security Agreement
Exhibit I	-	Form of Closing Checklist

Exhibit 6.1(j) - Form of Borrowing Base Certificate

This Senior Secured Priming and Superpriority Debtor-in-Possession Revolving Credit Agreement, dated as of April [], 2009, is entered into among DAYTON SUPERIOR CORPORATION, a Delaware corporation (the "Borrower"), as debtor and debtor-in-possession under Chapter 11 of the Bankruptcy Code, the Lenders (as defined below), the L/C Issuers (as defined below) and GENERAL ELECTRIC CAPITAL CORPORATION ("GE Capital"), as administrative agent and collateral agent for the Lenders and the L/C Issuers (in such capacity, and together with its successors and permitted assigns, the "Administrative Agent").

The parties hereto agree as follows:

ARTICLE 1 DEFINITIONS, INTERPRETATION AND ACCOUNTING TERMS

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

"Account Debtor" means any Person who may become obligated to the Borrower under, with respect to, or on account of, an Account, Chattel Paper or General Intangibles (including a payment intangible).

"Accounts" means all "accounts," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, including (a) all accounts receivable, other receivables, Rentals, book debts and other forms of obligations (other than, except in the case of Rentals, forms of obligations evidenced by Chattel Paper or Instruments), (including any such obligations that may be characterized as an account or contract right under the UCC), (b) all of the Borrower's rights in, to and under all purchase orders or receipts for goods or services, (c) all of the Borrower rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to the Borrower for property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by the Borrower or in connection with any other transaction (whether or not yet earned by performance on the part of the Borrower), (e) all healthcare insurance receivables, and (f) all collateral security of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

"Affected Lender" has the meaning specified in Section 2.18.

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

"Agreement" means this Senior Secured Priming and Superpriority Debtor-in-Possession Revolving Credit Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

SENIOR SECURED PRIMING AND SUPERPRIORITY
DEBTOR-IN-POSSESSION
REVOLVING CREDIT AGREEMENT
[DAYTON SUPERIOR CORPORATION]

"Applicable Budget" means (i) in the case of the first Budget Period, the Budget delivered on the Closing Date, and (ii) in the case of any subsequent Budget Period, the portion of the immediately prior Budget covering the first four weeks of such Budget Period, and the immediately succeeding Budget covering the last 13 weeks of such Budget Period.

"Applicable Margin" means (i) in the case of any Revolving Loan that is a Eurodollar Rate Loan, 12.00% per annum and (ii) in the case of any Revolving Loan or Swing Loan that is a Base Rate Loan 11.00% per annum.

"Approved Fund" means, with respect to any Lender, any Person (other than a natural Person) that (a) is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and (b) is advised or managed by (i) such Lender, (ii) any Affiliate of such Lender or (iii) any Person (other than an individual) or any Affiliate of any Person (other than an individual) that administers or manages such Lender.

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

"Avoidance Actions" has the meaning specified in Section 2.21.

"Bankruptcy Code" means 11 U.S.C 101 et seq.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware.

"Base Rate" means the greatest of (i) the rate last quoted by The Wall Street Journal as the "Prime rate" (viz., as of the date hereof, the base rate posted by 70% of the nation's largest banks) in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent), (ii) 400 basis points in excess of the Federal Funds Rate, (iii) 4.25% per annum and (iv) a per annum rate equal to the Eurodollar Rate calculated based on an Interest Period of three months plus the difference between the Applicable Margin for Eurodollar Rate Loans and the Applicable Margin for Base Rate Loans.

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

"Benefit Plan" means any employee benefit plan as defined in Section 3(3) of ERISA (whether governed by the laws of the United States or otherwise) to which any Group Member incurs or otherwise has any obligation or liability, contingent or otherwise.

"Bid Procedures Motion" has the meaning specified in the definition of "Termination Event."

"Borrowing" means a borrowing consisting of Loans (other than Swing Loans and Loans deemed made pursuant to Section 2.3 or 2.4) made on the same day by the Lenders according to their respective Commitments.

"Borrowing Availability" means as of any date of determination the least of (i) the aggregate Commitments less any Revolving Credit Outstandings then outstanding (including, without duplication,

the outstanding balance of L/C Obligations and Swing Loans then outstanding), and (ii) the Borrowing Base, less any Revolving Credit Outstandings then outstanding (including, without duplication, the outstanding balance of L/C Obligations and Swing Loans then outstanding).

"Borrowing Availability Block" means, from and including the Closing Date through July 31, 2009, an amount equal to \$5,000,000, from and including August 1, 2009 through October 15, 2009, an amount equal to \$10,000,000 and thereafter, an amount equal to \$15,000,000.

"Borrowing Base" means, as of any date of determination by the Administrative Agent, an amount equal to the sum at such time of:

(a) 85% of the net amount of Eligible Accounts of the Borrower and its Domestic Subsidiaries which are not more than 120 days past invoice date and 80% of the net amount of Eligible Accounts of the Borrower and its Domestic Subsidiaries which are more than 120 and not more than 150 days past invoice date, in each case, at such time (such percentages being subject to adjustment as provided in Section 2.19); plus

(b) (i) the lesser of (x) 60% of the cost of Eligible Inventory (other than Rental Fleet) or (y) 85% of the Net Orderly Liquidation Value of Eligible Inventory (other than Rental Fleet) of the Borrower and its Domestic Subsidiaries (such percentages being subject to adjustment as provided in Section 2.20), plus (ii) the lesser of (x) 60% of the cost of the Rental Fleet or (y) 85% of the Net Orderly Liquidation Value of the Rental Fleet of the Borrower and its Domestic Subsidiaries (such percentages being subject to adjustment as provided in Section 2.20); minus

(c) Reserves required by the Administrative Agent in its Permitted Discretion; minus

(d) \$15,000,000.

"Borrowing Base Certificate" has the meaning specified in Section 6.1(j).

"Budget" means each thirteen week cash flow forecast, which has been accepted by the Administrative Agent and which is in form and substance satisfactory to the Administrative Agent, in its sole discretion.

"Budget Period" means (i) in the case of the Budget delivered on the Closing Date, the period of 13 weeks beginning with the Petition Date and ending on the last day of the 13th week covered by such Budget and (ii) in the case of any Budget subsequently delivered, beginning on the first day of the 10th week covered by the Budget delivered immediately prior to such Budget and ending on the last day of the 13th week covered by such Budget.

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

"Business Plan" means Borrower's business plan which shall include a consolidating and consolidated income statement and statement of cash flows, a balance sheet, a financial forecast and a Borrowing Base utilization and Borrowing Availability forecast on a monthly basis from the Petition Date through March 31, 2010, prepared by Borrower's management.

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

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

"Carve-Out" has the meaning specified in Section 2.21.

"Carve-Out Trigger Date" has the meaning specified in Section 2.21.

"Carve-Out Trigger Notice" has the meaning specified in Section 2.21.

"Cash Collateral Account" means a deposit account or securities account in the name of the Borrower and under the sole control (as defined in the applicable UCC) of the Administrative Agent and (a) in the case of a deposit account, from which the Borrower may not make withdrawals except as permitted by the Administrative Agent and (b) in the case of a securities account, with respect to which the Administrative Agent shall be the entitlement holder and the only Person authorized to give entitlement orders with respect thereto.

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

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

"Change of Control" means any of the following: (i) (x) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than Odyssey Investment Partners, one or more of its Related Parties or a Permitted Group, shall become, or obtain rights (whether by means of warrants, options or otherwise) to become, the

"beneficial owner" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, except that such person or group shall be deemed to have beneficial ownership of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the voting power of the issued and outstanding shares of Stock of the Borrower having the right to vote for the election of directors of the Borrower under ordinary circumstances, and (y) Odyssey Investment Partners and its Related Parties and any Permitted Group collectively "beneficially own" (as defined above), directly or indirectly, in the aggregate a lesser percentage than such "person" or "group" of the voting power of the issued and outstanding shares of Stock of the Borrower having the right to vote for the election of directors of the Borrower under ordinary circumstances and do not have the right or ability to designate for election a majority of the Board of Directors of the Borrower; or (ii) for so long as any Senior Subordinated Notes are outstanding, the occurrence of a "Change of Control" (as defined in the Senior Subordinated Notes Indenture), in each case other than any Change of Control resulting from a plan of reorganization upon consummation of which all Obligations are paid in full in cash.

For the purpose of this definition, a person or group shall be deemed to beneficially own Stock in a person held by a parent entity if such person or group beneficially owns (as defined above) more than 50% of the issued and outstanding shares of Stock of such parent entity having the right to vote for the election of directors of such parent entity under ordinary circumstances.

"Chapter 11 Case" means Chapter 11 Case No. [____], filed on [____], 2009 by the Borrower by filing a voluntary petition with the Bankruptcy Court.

"Chattel Paper" means any "chattel paper," as such term is defined in the UCC, including electronic chattel paper, now owned or hereafter acquired in connection with this Agreement, the other Loan Documents and the transactions contemplated thereunder.

"Closing Checklist" means the checklist of closing items attached hereto as Exhibit I.

"Closing Date" means the date and time at which the first Loan is made or any Letter of Credit is issued hereunder.

"Code" means the U.S. Internal Revenue Code of 1986.

"Collateral" means all property and interests in property and proceeds thereof now owned or hereafter acquired by the Borrower in or upon which a Lien is granted or purported to be granted pursuant to any Loan Document or pursuant to any Order.

"Commitments" means, collectively, the Initial Loan Commitments and the Incremental Revolving Loan Commitments.

"Committee" means the official committee of unsecured creditors appointed by the Office of the United States Trustee in the Chapter 11 Case.

"Compliance Certificate" means a certificate substantially in the form of Exhibit G.

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

"Consolidated EBITDA" means, with respect to any Person for any period, (a) the Consolidated Net Income of such Person for such period plus (b) the sum of, in each case to the extent included in the

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

"Consolidated Interest Expense" means, for any Person for any period, (a) Consolidated total interest expense of such Person and its Subsidiaries for such period and including, in any event, (i) interest capitalized during such period and net costs under Interest Rate Contracts for such period and (ii) all fees, charges, commissions, discounts and other similar obligations (other than reimbursement obligations) with respect to letters of credit, bank guarantees, banker's acceptances, surety bonds and performance bonds (whether or not matured) payable by such Person and its Subsidiaries during such period minus (b) the sum of (i) Consolidated net gains of such Person and its Subsidiaries under Interest Rate Contracts for such period and (ii) Consolidated interest income of such Person and its Subsidiaries for such period.

"Consolidated Net Income" means, with respect to any Person, for any period, the Consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be Consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

"Constituent Documents" means, with respect to any Person, collectively and, in each case, together with any modification of any term thereof, (a) the articles of incorporation, certificate of incorporation, constitution or certificate of formation of such Person, (b) the bylaws, operating agreement or joint venture agreement of such Person, (c) any other constitutive, organizational or governing document of such Person, whether or not equivalent, and (d) any other document setting forth the manner of election or duties of the directors, officers or managing members of such Person or the designation, amount or relative rights, limitations and preferences of any Stock of such Person.

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

"Control Agreement" means, with respect to any deposit account (other than Excluded Accounts), any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance reasonably satisfactory to the Administrative Agent, among the Administrative Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Borrower effective to grant "control" (as defined under the applicable UCC) over such account, securities entitlement or commodities contract to the Administrative Agent.

"Controlled Deposit Account" means each deposit account (including all funds on deposit therein and excluding any Excluded Accounts) that is the subject of an effective Control Agreement and that is maintained by the Borrower with a financial institution approved by the Administrative Agent.

"Controlled Securities Account" means each securities account or commodity account (including all financial assets held therein and all certificates and instruments, if any, representing or evidencing such financial assets) that is the subject of an effective Control Agreement and that is maintained by the Borrower with a securities intermediary or commodity intermediary approved by the Administrative Agent.

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

"Corporate Chart" means a document in form reasonably acceptable to the Administrative Agent and setting forth, as of a date set forth therein, for the Borrower and each Subsidiary or joint venture thereof, (a) the full legal name of such Person, (b) the jurisdiction of organization and any organizational number and tax identification number of such Person, (c) the location of such Person's chief executive office (or, if applicable, sole place of business) and (d) the number of shares of each class of Stock of such Person authorized, the number outstanding and the number and percentage of such outstanding shares for each such class owned, directly or indirectly, by the Borrower or any Subsidiary of any of them.

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

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

(b) Liens of a collection bank on items in the course of collection arising under Section 4-208 of the UCC as in effect in the State of New York or any similar section under any applicable UCC or any similar Requirement of Law of any foreign jurisdiction;

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

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

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

(f) Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and (iv) for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP; and

(g) the title and interest of a lessor or sublessor in and to personal property leased or subleased (other than through a Capital Lease), in each case extending only to such personal property.

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

"Disclosure Documents" means all documents filed by any Group Member with the United States Securities and Exchange Commission.

"Disqualified Stock" means that portion of any Stock or Stock Equivalents which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute a Change of Control), matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control) on or before the date that is six months after the 6th anniversary of the Closing Date.

"Dollars" and the sign "\$" each mean the lawful money of the United States.

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

"Domestic Subsidiaries" means each Subsidiary of the Borrower that is organized under the laws of a State of the United States or the District of Columbia.

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

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

"Eligible Accounts" has the meaning specified in Section 2.19.

"Eligible Inventory" has the meaning specified in Section 2.20.

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

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

"ERISA" means the United States Employee Retirement Income Security Act of 1974.

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

"ERISA Event" means any of the following: (a) a reportable event described in Section 4043(b) of ERISA (or, unless the 30-day notice requirement has been duly waived under the applicable regulations, Section 4043(c) of ERISA) with respect to a Title IV Plan, (b) the withdrawal of any ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA, (c) the complete or partial withdrawal of any ERISA Affiliate from any Multiemployer Plan, (d) with respect to any Multiemployer Plan, the filing of a notice of reorganization, insolvency or termination (or treatment of a plan amendment as termination) under Section 4041A of ERISA, (e) the filing of a notice of intent to terminate a Title IV Plan (or treatment of a plan amendment as termination) under Section 4041 of ERISA, (f) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC, (g) the failure to make any required contribution to any Title IV Plan or Multiemployer Plan when due, (h) the imposition of a Lien under Section 430(k) of the Code or Section 303(k) or 4068 of ERISA on any property (or rights to property, whether real or personal) of any ERISA Affiliate, or a violation of Section 436 of the Code with respect to a Title IV Plan, (i) the failure of a Benefit Plan or any trust thereunder intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law to qualify thereunder and (j) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of any liability upon any ERISA Affiliate under Title IV of ERISA other than for PBGC premiums due but not delinquent.

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

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

"Eurodollar Base Rate" means, with respect to any Interest Period for any Eurodollar Rate Loan, the greater of (i) 3.25% and (ii) the rate determined by the Administrative Agent to be the offered rate for deposits in Dollars for the applicable Interest Period appearing on the Reuters Screen LIBOR01 page as of 11:00 a.m. (London time) on the second full Business Day next preceding the first day of each Interest Period. In the event that such rate does not appear on the Reuters Screen LIBOR01 page at such time, the "Eurodollar Base Rate" shall be determined by reference to such other comparable publicly available service for displaying the offered rate for deposit in Dollars in the London interbank market as may be selected by the Administrative Agent and, in the absence of availability, such other method to determine such offered rate as may be selected by the Administrative Agent in its sole discretion.

"Eurodollar Rate" means, with respect to any Interest Period and for any Eurodollar Rate Loan, an interest rate per annum determined as the ratio of (a) the Eurodollar Base Rate with respect to such Interest Period for such Eurodollar Rate Loan to (b) the difference between the number one and the Eurodollar Reserve Requirements with respect to such Interest Period and for such Eurodollar Rate Loan.

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

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

"Event of Default" has the meaning specified in Section 9.1.

"Excluded Accounts" means any (a) zero balance payroll, withholding tax and other fiduciary accounts of any Group Member and (b) other deposit accounts of any Group Member that in the aggregate do not hold more than \$100,000 on an overnight basis.

"Excluded Foreign Subsidiary" means (a) any Subsidiary of the Borrower that is not a Domestic Person or is a Domestic Person all or substantially all of whose assets consists of Stock of Subsidiaries that are not Domestic Persons, and in respect of which the pledge of all of the Stock of such Subsidiary as Collateral for any Obligation of the Borrower, would, in the good faith judgment of the Borrower, result in materially adverse tax consequences to the Borrower and its Subsidiaries, taken as a whole, and which has not guaranteed any material Indebtedness of the Borrower or any Domestic Subsidiary of the Borrower and more than 66 2/3% of the voting stock of such Domestic Person has not been pledged to secure any such Indebtedness and (b) provided that it has not guaranteed any material Indebtedness of the Borrower or any Domestic Subsidiary thereof, Dayton Superior Canada Ltd.

"Existing Liens" means valid and perfected Liens in existence at the time of the commencement of the Chapter 11 Case and valid Liens in existence at the time of such commencement of the Chapter 11 Case that are perfected after such commencement as permitted by Section 546(b) of the Bankruptcy Code.

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

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

"Fee Letter" means the letter agreement, dated as of April [], 2009, addressed to the Borrower from the Administrative Agent and accepted by the Borrower, with respect to certain fees to be paid from time to time to the Administrative Agent and its Related Persons.

"Final Order" means, collectively, the orders of the Bankruptcy Court entered in the Chapter 11 Case after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which orders shall be satisfactory in form and substance to Administrative Agent in its sole discretion, and which orders are in effect and not stayed, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to Administrative Agent in its sole discretion, which, among other matters but not by way of limitation, which provides that the relief granted in the Interim Order is granted on a final basis and, in addition which (i) determines that all pre-petition Liens and claims under or in connection with the Pre-Petition Credit Agreement are deemed finally allowed and approved as legal, valid and binding Liens and claims that are not subject to any equitable subordination, defense, reduction, counterclaim or avoidance absent a timely objection thereto by a person with standing to do so (other than Borrower) within 60 days after commencement of the Chapter 11 Case; (ii) grants Liens to Administrative Agent and Lenders pursuant to section 364(c)(2) of the Bankruptcy Code against avoidance actions as contemplated herein; (iii) proscribes any surcharge of any pre-petition Liens of the Prior Administrative Agent and the Prior Lenders under the Pre-Petition Credit Agreement or post-petition Liens of the Administrative Agent and Lenders or Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise; (iv) provides for payment in full of the "Obligations" under and as such term is defined the Pre-Petition Credit Agreement on the Closing Date (other than Obligations in respect of undrawn Pre-Petition Letters of Credit, which Pre-Petition Letters of Credit shall become Letters of Credit hereunder on the Closing Date); and (v) contains a carve-out provision on Term Loan Priority Collateral in form and substance satisfactory to the Administrative Agent in its sole discretion and does not provide for a waiver of surcharge rights under section 506(c) of the Bankruptcy Code as to Term Loan Priority Collateral and (vi) and provides that in connection with payment in full in cash of the Obligations in any confirmed plan of reorganization of the Borrower in the Chapter 11 Case, proceeds of the Revolving Credit Priority Collateral consisting of Unperfected Term Loan Priority Collateral shall be deemed to have been applied to the payment of such Obligations prior the application of proceeds to such Obligations of any other Collateral.

"Financial Statement" means each financial statement delivered pursuant to Section 4.4 or 6.1.

"First Day Orders" means the orders entered by the Bankruptcy Court in the Chapter 11 Case pursuant to motions and applications filed by the Borrower within ten (10) days after the Petition Date, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

"Fiscal Month" means any of the monthly accounting periods of the Borrower.

"Fiscal Quarter" means each 3 Fiscal Month period ending on March 31, June 30, September 30 or December 31.

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

"GAAP" means generally accepted accounting principles in the United States, as in effect from time to time, set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants, in the statements and pronouncements of the Financial Accounting Standards Board and in such other statements by such other entity as may be in general use by significant segments of the accounting profession that are applicable to the circumstances as of the date of determination. Subject to Section 1.3, all references to "GAAP" shall be to GAAP applied consistently with the principles used in the preparation of the Financial Statements described in Section 4.4(a).

"General Intangibles" means "general intangibles," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, including all right, title and interest that the Borrower may now or hereafter have in or under any Contractual Obligation, all payment intangibles, customer lists, licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark license), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, deposit, checking and other bank accounts, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all books and records, correspondence, credit files, invoices and other papers, including all tapes, cards, computer runs and other papers and documents in the possession or under the control of the Borrower or any computer bureau or service company from time to time acting for the Borrower.

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

"Group Members" means, collectively, the Borrower and its Subsidiaries.

"Group Members' Accountants" means Deloitte & Touche USA LLP or other nationally-recognized independent registered certified public accountants designated by the Borrower and reasonably acceptable to the Administrative Agent.

"Guaranty and Security Agreement" means a guaranty and security agreement, in substantially the form of Exhibit H, between the Administrative Agent and the Borrower, as the same may from time to time be amended, restated, supplemented or otherwise modified.

"Guaranty Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of such Person for any Indebtedness, lease, dividend or other obligation (the "primary obligation") of another Person (the "primary obligor"), if the purpose or intent of such Person in incurring such liability, or the economic effect thereof, is to guarantee such primary obligation or provide support, assurance or comfort to the holder of such primary obligation or to protect or indemnify such holder against loss with respect to such primary obligation, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of any primary obligation, (b) the incurrence of reimbursement obligations with respect to any letter of credit or bank guarantee in support of any primary obligation, (c) the existence of any Lien, or any right, contingent or otherwise, to receive a Lien, on the property of such Person securing any part of any primary obligation and (d) any liability of such Person for a primary obligation through any Contractual Obligation (contingent or otherwise) or other arrangement (i) to purchase, repurchase or otherwise acquire such primary obligation or any security therefor or to provide funds for the payment or discharge of such primary obligation (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency, working capital, equity capital or any balance sheet item, level of income or cash flow, liquidity or financial condition of any primary obligor, (iii) to make take-or-pay or similar payments, if required, regardless of non-performance by any other party to any Contractual Obligation, (iv) to purchase, sell or lease (as lessor or lessee) any property, or to purchase or sell services, primarily for the purpose of enabling the primary obligor to satisfy such primary obligation or to protect the holder of such primary obligation against loss or (v) to supply funds to or in any other manner invest in, such primary obligor (including to pay for property or services irrespective of whether such property is received or such services are rendered); provided, however, that "Guaranty Obligations" shall not include (x) endorsements for collection or deposit in the ordinary course of business and (y) product warranties given in the ordinary course of business. The outstanding amount of any Guaranty Obligation shall equal the outstanding amount of the primary obligation so guaranteed or otherwise supported or, if lower, the stated maximum amount for which such Person may be liable under such Guaranty Obligation.

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

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

"Incremental Borrowing Availability" means as of any date of determination the aggregate Incremental Revolving Loan Commitments less the sum of (a) any Incremental Revolving Credit Outstandings then outstanding (including, without duplication, the outstanding balance of L/C Obligations and Swing Loans then outstanding), plus (b) the Borrowing Availability Block plus (c) Reserves under clause (b) of the definition of "Reserves".

"Incremental Revolving Loan" has the meaning specified in Section 2.1(b).

"Incremental Revolving Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make Incremental Revolving Loans and acquire interests in other Incremental Revolving Credit Outstandings, which commitment is in the sum of (i) the amount set forth opposite such Lender's name on Schedule I under Part A under the caption "Incremental Revolving Loan Commitment", as amended to reflect Assignments and as such amount may be reduced pursuant to this

Agreement plus (ii) such Lender's Pro Rata Share of the undrawn amount as of the Closing Date of any Roll-Over Letter of Credit as set forth opposite such Lender's name on Schedule I under Part B under the caption "Incremental Revolving Loan Commitment". The aggregate amount of the Incremental Revolving Loan Commitments under clause (i) of the definition thereof on the date hereof equals \$[54,353,129.53]¹.

"Incremental Revolving Credit Outstandings" means, at any time, the sum of the outstanding principal balance of the Incremental Revolving Loans and Swing Loans plus all L/C Obligations at such time.

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

"Indemnified Matter" has the meaning specified in Section 11.4.

"Indemnitee" has the meaning specified in Section 11.4.

"Initial Loan" has the meaning specified in Section 2.1(a).

"Initial Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make Initial Loans, which commitment is in the amount set forth opposite such Lender's name on Schedule I under the caption "Initial Loan Commitment", as amended to reflect Assignments and as such amount may be reduced pursuant to this Agreement. The aggregate amount of the Initial Loan Commitments on the date hereof equals \$[101,722,762.97].

"Initial Projections" means those financial projections, dated March 18, 2009, covering the period for the Borrower beginning on April 1, 2009 and ending on March 31, 2010 and delivered to the Prior Administrative Agent.

¹ Commitment amounts are subject to change based on accrual of interest

"Instruments" means all "instruments," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

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

"Interest Period" means, with respect to any Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is made or converted to a Eurodollar Rate Loan or, if such loan is continued, on the last day of the immediately preceding Interest Period therefor and, in each case, ending one month thereafter; provided, however, that (a) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless the result of such extension would be to extend such Interest Period into another such Business Day falls in the next calendar month, in which case such Interest Period shall end on the immediately preceding Business Day, (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month, (c) the Borrower may not select any Interest Period ending after the Scheduled Maturity Date, (d) the Borrower may not select any Interest Period in respect of Loans having an aggregate principal amount of less than \$5,000,000 and (e) there shall be outstanding at any one time no more than 5 Interest Periods.

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

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

"Interim Order" means, collectively, the orders of the Bankruptcy Court entered in the Chapter 11 Case after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extension, modifications, and amendments thereto, in form and substance satisfactory to Administrative Agent in its sole discretion, which, among other matters but not by way of limitation, authorizes, on an interim basis, Borrower to execute and perform under the terms of this Agreement and the other Loan Documents; approves Borrower's stipulation to the validity, extent, amount, perfection, priority, and non-avoidability of the pre-petition claims and Liens granted under or in connection with the Pre-Petition Credit Agreement; grants Liens to Administrative Agent and Lenders pursuant to section 364(c)(2) and 364(d) of the Bankruptcy Code against the Collateral (other than the Avoidance Actions) as contemplated herein; provides for the adequate protection (including, without limitation the adequate protection replacement Liens) set forth herein; authorizes Administrative Agent to enforce its Liens and the Loan Documents upon or after the occurrence of an event of default in accordance with the terms and conditions set forth in the Interim Order; confers section 364(c)(1) priority status on all extensions of credit by Administrative Agent and Lenders under this Agreement; finds that Administrative Agent and Lenders have acted in good faith in connection with the proposed financing and are entitled to the benefits of section 364(e) of the Bankruptcy Code; provides that the Prior Administrative Agent and Pre-Petition Lenders 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 to section 552(b) of the Bankruptcy Code shall not apply to the Prior Administrative Agent or Pre-Petition Lenders with respect to proceeds, products, offspring or profits of any of the collateral securing the Pre-Petition Indebtedness; and provides that the Prior Administrative Agent and Pre-Petition Lenders shall not be subject to the equitable doctrine of marshalling; provides that the Liens

granted to Administrative Agent and Lenders under this Agreement and the other Loan Documents and pursuant to the Interim Order are deemed perfected without the necessity of the Administrative Agent or any Lender filing for record of any documents, notices, or other filings (but Borrower agrees to execute and deliver to Administrative Agent, and to authorize Administrative Agent to file, any such documents; provides for payment in full of the "Obligations" under and as such term is defined the Pre-Petition Credit Agreement on the Closing Date (other than Obligations in respect of undrawn Pre-Petition Letters of Credit, which Pre-Petition Letters of Credit shall become Letters of Credit hereunder on the Closing Date); contains a carve-out provision on Term Loan Priority Collateral in form and substance satisfactory to the Administrative Agent in its sole discretion and does not provide for a waiver of surcharge rights under section 506(c) of the Bankruptcy Code as to Term Loan Priority Collateral and provides that in connection with payment in full in cash of the Obligations in any confirmed plan of reorganization of the Borrower in the Chapter 11 Case, proceeds of the Revolving Credit Priority Collateral consisting of Unperfected Term Loan Priority Collateral shall be deemed to have been applied to the payment of such Obligations prior the application of proceeds to such Obligations of any other Collateral.

"Inventory" means any "inventory," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, wherever located, including inventory, merchandise, goods and other personal property that are held by or on behalf of the Borrower for sale or lease (or that are being leased) or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, supplies or materials of any kind, nature or description used or consumed or to be used or consumed in the Borrower's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded software.

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

"Investment Property" means all "investment property," as such term is defined in the UCC, now owned or hereafter acquired by the Borrower, wherever located, including: (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares; (ii) all securities entitlements of the Borrower, including the rights of the Borrower to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account; (iii) all securities accounts of the Borrower; (iv) all commodity contracts of the Borrower; and (v) all commodity accounts held by the Borrower.

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

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

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

"Issue" means, with respect to any Letter of Credit, to issue, extend the expiration date of, renew (including by failure to object to any automatic renewal on the last day such objection is permitted), increase the face amount of, or reduce or eliminate any scheduled decrease in the face amount of, such Letter of Credit, or to cause any Person to do any of the foregoing. The terms "Issued" and "Issuance" have correlative meanings.

"L/C Cash Collateral Account" means any Cash Collateral Account (a) specifically designated as such by the Borrower in a notice to the Administrative Agent and (b) from and after the effectiveness of such notice, not containing any funds other than those required under the Loan Documents to be placed therein.

"L/C Issuer" means (a) GE Capital or any of its Affiliates and (b) each Person that hereafter becomes an L/C Issuer with the approval of, and pursuant to an agreement with and in form and substance satisfactory to, the Administrative Agent and the Borrower, in each case in their capacity as L/C Issuers hereunder and together with their successors.

"L/C Obligations" means, for any Letter of Credit at any time, the sum of (a) the L/C Reimbursement Obligations at such time for such Letter of Credit and (b) the aggregate maximum undrawn face amount of such Letter of Credit outstanding at such time.

"L/C Reimbursement Agreement" has the meaning specified in Section 2.4(a).

"L/C Reimbursement Date" has the meaning specified in Section 2.4(e).

"L/C Reimbursement Obligation" means, for any Letter of Credit, the obligation of the Borrower to the L/C Issuer thereof, as and when matured, to pay all amounts drawn under such Letter of Credit.

"L/C Request" has the meaning specified in Section 2.4(b).

"L/C Sublimit" means \$25,000,000.

"Lender" means, collectively, the Swingline Lender and any other financial institution or other Person that (a) is listed on the signature pages hereof as a "Lender" or (b) from time to time becomes a party hereto by execution of an Assignment, in each case together with its successors.

"Lender Expense Replacement Lien" shall have the meaning assigned to it in the Interim Order or the Final Order, as applicable.

"Letter of Credit" means any Roll-Over Letter of Credit and any letter of credit Issued pursuant to Section 2.4.

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

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

"Loan" means any loan made or deemed made by any Lender hereunder.

"Loan Documents" means, collectively, this Agreement, any Notes, the Guaranty and Security Agreement, the Mortgages, the Control Agreements, the Fee Letter, the L/C Reimbursement Agreements, the Secured Hedging Agreements, and, when executed, each document executed by the Borrower and delivered to the Administrative Agent, any Lender or any L/C Issuer in connection with or pursuant to any of the foregoing or the Obligations, together with any modification of any term, or any waiver with respect to, any of the foregoing.

"Material Adverse Effect" means an effect that results in or causes, or could reasonably be expected to result in or cause, a material adverse change in any of (a) the condition (financial or otherwise), business, performance, operations or property of the Group Members, taken as a whole (other than any change of the type that customarily occurs as a result of the commencement of a proceeding under chapter 11 of the Bankruptcy Code), (b) the ability of the Borrower to perform its obligations under any Loan Document and (c) the validity or enforceability of any Loan Document or the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under any Loan Document.

"Material Environmental Liabilities" means Environmental Liabilities exceeding \$500,000.

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

"Mortgage" means any mortgage, deed of trust or other document executed or required herein to be executed by the Borrower and granting a security interest over any owned real property in favor of the Administrative Agent as security for the Obligations.

"Mortgage Supporting Documents" means, with respect to any Mortgage for a parcel of owned real property, each document (including title policies or marked-up unconditional insurance binders (in each case, together with copies of all documents referred to therein), maps, ALTA (or TLTA, if applicable) as-built surveys (in form and as to date that is sufficiently acceptable to the title insurer issuing title insurance to the Administrative Agent for such title insurer to deliver endorsements to such title insurance as reasonably requested by the Administrative Agent), environmental assessments and reports (in the case of owned real property acquired after the Closing Date) and evidence regarding recording and payment of fees, insurance premium and taxes) that the Administrative Agent may reasonably request, to create, register, perfect, maintain, evidence the existence, substance, form or

validity of or enforce a valid Lien on such parcel of real property in favor of the Administrative Agent for the benefit of the Secured Parties, subject only to Permitted Liens and such other Liens as the Administrative Agent may reasonably approve.

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

"Net Cash Proceeds" means proceeds received in cash from (a) any Sale of, or Property Loss Event with respect to, property, net of (i) the reasonable out-of-pocket cash costs, fees and expenses paid or required to be paid in connection therewith, (ii) any taxes paid or reasonably estimated to be payable as a result thereof, (iii) any amount required to be applied to the repayment of Indebtedness other than owing to any Group Member (including any premium or penalty, if any, and interest) secured by a Lien expressly permitted hereunder on any asset that is the subject of such Sale or Property Loss Event (excluding any Lien pursuant to a Loan Document) and (iv) any amounts provided as a reserve, in accordance with GAAP, against any liabilities in respect of any indemnification obligations or purchase price adjustment associated with such Sale (provided that, to the extent and at any time such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), or (b) any sale or issuance of Stock or incurrence of Indebtedness, in each case net of brokers', advisors' and investment banking fees and other reasonable underwriting discounts, commissions and other reasonable out-of-pocket cash costs, fees and expenses, in each case incurred in connection with such transaction; provided, however, that any such proceeds received by any Subsidiary of the Borrower that is not a Wholly Owned Subsidiary of the Borrower shall constitute "Net Cash Proceeds" only to the extent of the aggregate direct and indirect beneficial ownership interest of the Borrower therein.

"Net Orderly Liquidation Value" means, at any time, as to the Rental Fleet or as to any Eligible Inventory (other than the Rental Fleet), the net orderly liquidation value thereof determined most recently at or prior to such time in writing by an independent appraiser selected by the Administrative Agent with the consent of the Borrower, such consent not to be unreasonably withheld, each such determination to be made using the same basis and or approach to valuation consistent with the approach used in the initial determination and calculating the orderly liquidation value net of liquidation costs.

"Non-Excluded Taxes" has the meaning specified in Section 2.17(a).

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

"Non-U.S. Lender Party" means each of the Administrative Agent, each Lender, each L/C Issuer, each SPV and each participant, in each case that is not a Domestic Person.

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

"Notice of Borrowing" has the meaning specified in Section 2.2(a).

"Notice of Conversion or Continuation" has the meaning specified in Section 2.10(b).

"Obligations" means all amounts, obligations, liabilities, covenants and duties of every type and description owing by the Borrower to the Administrative Agent, any Lender, any L/C Issuer, any other Indemnitee, any participant, any SPV or any Secured Hedging Counterparty arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or

hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (a) all Loans and L/C Obligations, (b) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (c) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to the Borrower under any Loan Document (including those payable to L/C Issuers as described in Section 2.11).

"Odyssey Investment Partners" means Odyssey Investment Partners Fund, L.P. and/or Odyssey Investment Partners, LLC and their respective Affiliates.

"Orders" means, collectively, the Interim Order and the Final Order.

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

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

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

"Perfected Term Loan Priority Collateral Liens" means Liens in favor of the "Administrative Agent" and/or "Collateral Agent" (as such terms are defined as of the Closing Date in the Pre-Petition Term Loan Credit Agreement) securing the "Obligations" (as such term is defined as the Closing Date in the Pre-Petition Term Loan Credit Agreement) on Term Loan Priority Collateral that as of the Petition Date were perfected.

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

"Permitted 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 Group" means any group of investors that is deemed to be a "person" (as that term is used in Section 13(d)(3) of the Exchange Act) by virtue of a Voting Agreement or any similar agreement, as the same may be amended, modified or supplemented from time to time; provided, however, that no single Person (other than Odyssey Investment Partners and its Related Parties) beneficially owns (together with its Affiliates) more of the voting power of the issued and outstanding shares of Stock of the Borrower, having the right to vote for the election of directors of the Borrower under ordinary circumstances, that is beneficially owned by such group of investors than is then collectively beneficially owned by Odyssey Investment Partners and its Related Parties in the aggregate.

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

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

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

"Permitted Overadvance Amount" means at any time the sum of (i) the amount of Special Overadvances (as defined in the Pre-Petition Credit Agreement) outstanding as of the Closing Date immediately prior to the making of the Initial Loan, plus (ii) the amount of Incremental Revolving Loans made in accordance with Section 2.1(b) and within the limits of Incremental Borrowing Availability and outstanding at such time, plus (iii) the excess of the aggregate amount of undrawn and unreimbursed Letters of Credit Issued in accordance with Section 2.4 and within the limits of the Incremental Borrowing Availability over the aggregate amount of undrawn Roll-Over Letters of Credit as of the Closing Date plus (iv) Swing Loans made in accordance with Section 2.3 and within the limits of Incremental Borrowing Availability and outstanding at such time.

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

"Petition Date" means April 19, 2009.

"Post-Petition" means the time period beginning immediately upon the filing of the Chapter 11 Case.

"Post-Petition Indebtedness" means any or all Indebtedness of the Borrower incurred on or after the Petition Date.

"Pre-Petition" means the time period ending immediately prior to the Petition Date.

"Pre-Petition Credit Agreement" means the Revolving Credit Agreement, dated as of March 3, 2008, as amended by Amendment No. 1, dated as of March 16, 2009, Amendment No. 2, dated as of March 23, 2009 and Amendment No. 3, dated as of April 9, 2009.

"Pre-Petition Indebtedness" means any or all Indebtedness of the Borrower incurred prior to the Petition Date and outstanding on the Petition Date.

"Pre-Petition Intercreditor Agreement" means the Intercreditor Agreement, dated as of March 3, 2008, by and among Borrower, the Prior Administrative Agent and the Administrative Agent under (and as such term is defined in) the Pre-Petition Term Loan Credit Agreement.

"Pre-Petition Letters of Credit" means the letters of credit issued and outstanding on the Closing Date under the Pre-Petition Credit Agreement (and listed on Schedule II hereto).

"Pre-Petition Loan Documents" has the meaning assigned to the term "Loan Documents" in the Pre-Petition Credit Agreement.

"Pre-Petition Lender" means the "Lenders" (including the L/C Issuer) under and as such terms are defined in the Pre-Petition Credit Agreement.

"Pre-Petition Loans" means the aggregate "Revolving Loans", "Swing Loans" and "PIK Loans" (as each such term is defined in the Pre-Petition Credit Agreement) outstanding on the Petition Date.

"Pre-Petition Payments" means any payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Pre-Petition Indebtedness or other obligations or claims (including trade payables and payments in respect of reclamation claims) of the Borrower.

"Pre-Petition Term Loan Credit Agreement" means the Term Loan Credit Agreement, dated as of March 3, 2008, as amended by Amendment No. 1, dated as of June 4, 2008, Amendment No. 2, dated as of March 16, 2009, Amendment No. 3, dated as of March 23, 2009, Amendment No. 4, dated as of April 9, 2009 and Amendment No. 5, dated as of April , 2009.

"Primed Liens" shall mean (a) the Liens that secured the obligations of the Borrower under the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents, and (b) any Liens to which such Liens are senior and (c) Unperfected Term Loan Priority Collateral Liens.

"Prior Administrative Agent" shall mean the "Administrative Agent" and "Collateral Agent" under and as such terms are defined in the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents, including, without limitation, in their respective capacities as the holders of Liens created under the security documents and mortgages delivered pursuant to the Pre-Petition Credit Agreement.

"Prior Lender Replacement Lien" shall have the meaning assigned to it in the Interim Order or the Final Order, as applicable.

"Prior Lender Obligations" means the "Obligations" under and as such term is defined in the Pre-Petition Credit Agreement.

"Prior Lenders" means, collectively, the Lenders under (and as defined in) the Pre-Petition Credit Agreement.

"Pro Forma Balance Sheet" has the meaning specified in Section 4.4(c).

"Projections" means, collectively, the Initial Projections and any document delivered pursuant to Section 6.1(f).

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

"Pro Rata Outstandings", of any Lender at any time, means the sum of (i) the outstanding principal amount of Revolving Loans owing to such Lender and (ii) the amount of the participation of such Lender in the L/C Obligations outstanding with respect to all Letters of Credit.

"Pro Rata Share" means, with respect to any Lender at any time, the percentage obtained by dividing (a) the sum of the Commitments (or, if such Commitments are terminated, the Pro Rata Outstandings therein) of such Lender then in effect by (b) the sum of the Commitments (or, if such Commitments are terminated, the Pro Rata Outstandings therein) of all Lenders then in effect; provided, however, that, if there are no Commitments and no Pro Rata Outstandings, such Lender's Pro Rata Share shall be determined based on the Pro Rata Share most recently in effect, after giving effect to any subsequent assignment and any subsequent non-pro rata payments of any Lender pursuant to Section 2.18.

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

"Related Documents" means, collectively, the Loan Documents and each other document executed with respect to any of the foregoing or any Related Transaction.

"Related Party" means:

(1) any controlling stockholder, 50% (or more) owned Subsidiary, or immediate family member (in the case of an individual) of Odyssey Investment Partners;

(2) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, stockholders, partners, members, owners or Persons beneficially holding a 50% or more controlling interest of which consist of Odyssey Investment Partners and/or such other Persons referred to in the immediately preceding clause (1); or

(3) any investment partnership or investment fund controlled or managed by Odyssey Investment Partners.

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

"Related Transactions" means, collectively, borrowing of the Initial Loans on the Closing Date, and the payments of contemplated to be made on the Closing Date by Section 7.9(i), (ii) the Pre-Petition Letters of Credit becoming Letters of Credit hereunder, and (iii) and the payment of all fees, costs and expenses associated with all of the foregoing and the execution and delivery of all the Related Documents.

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

"Remedial Action" means all actions required under Environmental Laws to (a) clean up, remove, treat or in any other way address any Hazardous Material in the indoor or outdoor environment, (b) prevent or minimize any Release so that a Hazardous Material does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre-remedial studies and investigations and post-remedial monitoring and care with respect to any Hazardous Material.

"Rental Fleet" means Eligible Inventory held for lease by the Borrower or any of its Domestic Subsidiaries or being leased by the Borrower or any of its Domestic Subsidiaries.

"Rentals" means rental payments due to the Borrower or any Domestic Subsidiary from the rental of Inventory owned by the Borrower or such Domestic Subsidiary.

"Required Lenders" means, at any time, Lenders having at such time in excess of 50% of the sum of the aggregate Commitments (or, if such Commitments are terminated, the sum of the amounts of the

participations in Swing Loans, the principal amount of unparticipated portions of the Swing Loans and the Pro Rata Outstandings in the Revolving Credit Facility).

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

"Reserves" means, with respect to the Borrowing Base (a) reserves established by the Administrative Agent from time to time against Eligible Accounts or Eligible Inventory, (b) reserves in the full amount of the Carve-Out established by the Administrative Agent on the Closing Date and (c) such other reserves against Eligible Accounts, Eligible Inventory or Borrowing Availability that the Administrative Agent may, in its Permitted Discretion, establish from time to time. Without limiting the generality of the foregoing, Reserves established to ensure the payment of accrued interest expenses or Indebtedness shall be deemed to be within the Administrative Agent's Permitted Discretion.

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

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

"Revolving Credit Facility" means the Commitments and the provisions herein related to the Revolving Loans, Swing Loans and Letters of Credit.

"Revolving Credit Outstandings" means, at any time, the sum of, in each case to the extent outstanding at such time, (a) the aggregate principal amount of the Revolving Loans and Swing Loans and (b) the L/C Obligations for all Letters of Credit.

"Revolving Credit Priority Collateral" has the meaning specified for such term in the Pre-Petition Intercreditor Agreement and in any event, shall include (x) property of the type described as "Revolving

Credit Priority Collateral" therein that is created or acquired by the Borrower after the Petition Date and (y) Unperfected Term Loan Priority Collateral.

"Revolving Loan" has the meaning specified in Section 2.1(b).

"Revolving Superpriority Claims" has the meaning specified in Section 2.21.

"Roll-Over Letter of Credit" means a Pre-Petition Letter of Credit that is outstanding as of the Closing Date.

"S&P" means Standard & Poor's Rating Services.

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

"Satisfaction Date" means the date on which the events described in Section 10.10(b)(iii)(A), (B) and (C) occur.

"Scheduled Maturity Date" means April [], 2010.

"Secured Hedging Agreement" means any Hedging Agreement that (a) has been entered into with a Secured Hedging Counterparty, (b) in the case of a Hedging Agreement not entered into with or provided or arranged by the Administrative Agent or an Affiliate of the Administrative Agent, is expressly identified as being a "Secured Hedging Agreement" hereunder in a joint notice from the Borrower and such Person delivered to the Administrative Agent reasonably promptly after the execution of such Hedging Agreement and (c) meets the requirements of Section 8.1(f).

"Secured Hedging Counterparty" means (a) a Person who has entered into a Hedging Agreement with the Borrower if such Hedging Agreement was provided or arranged by the Administrative Agent or an Affiliate of the Administrative Agent, and any assignee of such Person or (b) a Lender or an Affiliate of a Lender who has entered into a Hedging Agreement with the Borrower (or a Person who was a Lender or an Affiliate of a Lender at the time of execution and delivery of the Hedging Agreement).

"Secured Parties" means the Lenders, the L/C Issuers, the Administrative Agent, any Secured Hedging Counterparty, each other Indemnitee and any other holder of any Obligation of the Borrower.

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

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

"Senior Subordinated Notes" means the "Notes" (as defined in the Senior Subordinated Notes Indenture) in an aggregate principal amount not exceeding \$155,000,000.

"Senior Subordinated Notes Indenture" means the Indenture, dated as of June 16, 2000 among the Borrower, the guarantors party thereto and United States Trust Company, as Trustee, relating to The Borrower's 13% Senior Subordinated Notes due 2009, as supplemented through the Closing Date and as subsequently amended, modified or supplemented in accordance with its term and the terms of this Agreement.

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

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

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

"Subordinated Debt" means any Indebtedness that is subordinated to the payment in full of the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent, including any Indebtedness under the Senior Subordinated Notes.

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

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

"Supermajority Lenders" means Lenders having (a) 80% or more of the Commitments of all Lenders, or (b) if the Commitments have been terminated, 80% or more of the aggregate outstanding amount of the Revolving Loan (with the Swing Loan being attributed to the Lender making such Loan).

"Superpriority Claim" means a claim against Borrower in the Chapter 11 Case which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

"SWDA" means the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.).

"Swingline Commitment" means \$10,000,000.

"Swingline Lender" means, each in its capacity as Swingline Lender hereunder, GE Capital or, upon the resignation of GE Capital as Administrative Agent hereunder, any Lender (or Affiliate or Approved Fund of any Lender) that agrees, with the approval of the Administrative Agent (or, if there is no such successor Administrative Agent, the Required Lenders) and the Borrower, to act as the Swingline Lender hereunder.

"Swingline Request" has the meaning specified in Section 2.3(b).

"Swing Loan" has the meaning specified in Section 2.3(a).

"Tax Affiliate" means, (a) the Borrower and its Subsidiaries and (b) any Affiliate of the Borrower with which the Borrower files or is eligible to file consolidated, combined or unitary tax returns.

"Tax Return" has the meaning specified in Section 4.8.

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

"Termination Date" means the earliest of (a) the Scheduled Maturity Date, (b) the date of termination of Lenders' obligations to make Loans and to incur L/C Obligations or permit existing Loans to remain outstanding pursuant to Section 9.2, (c) the date of indefeasible prepayment in full by Borrowers of the Loans and the cancellation and return (or stand-by guarantee) of all Letters of Credit or the cash collateralization of all L/C Obligations pursuant to Section 9.3, and the permanent reduction of all Commitments to zero dollars (\$0), (d) the first date on which a Termination Event occurs and (e) the effective date of a plan of reorganization in the Chapter 11 Case.

"Termination Event" means the earliest to occur of the following:

(a) the date that is 35 days after entry of the Interim Order if the Final Order is not entered prior to the expiration of such 35-day period (or such longer period as may be agreed upon by the Administrative Agent in its sole discretion);

(b) Borrower's (i) failure within 45 days following the Petition Date to enter into a definitive lock-up, purchase or similar agreement (on terms acceptable to the Required Lenders in all respects) with a purchaser (acceptable in all respects to the Administrative Agent) for the purchase by such purchaser of Borrower in connection with a plan of reorganization that provides for payment in full in cash of the Obligations upon consummation thereof, *and* (ii) failure to file a motion (the "Bid Procedures Motion") to approve bid procedures for the sale of all or substantially all of assets of Borrower (which, to the extent agreed by the Administrative Agent, shall allow credit bids by one or more Lenders) within 45 days after the Petition Date, which motion shall be acceptable to the Administrative Agent in its sole and absolute discretion;

(c) in the event that Borrower has not failed to comply with clause (b)(ii) of this definition, Borrower's (i) failure to obtain an order approving bid procedures for the sale of all or substantially all of the assets of the Borrower within 60 days of the Petition Date, which order shall be acceptable to the Administrative Agent in its sole and absolute discretion, (ii) failure to obtain an order approving the sale of all or substantially all of the assets of Borrower within 105 days after the Petition Date, which order shall be acceptable to the Administrative Agent in its sole and absolute discretion and shall result in payment in full in cash of the Obligations upon consummation of such sale, or (iii) failure to consummate such sale upon the approved terms within 120 days after the date of the Petition Date; provided that, prior to consummating such sale, the Borrower and applicable purchaser shall have agreed on (or the Bankruptcy Court has otherwise approved) a wind-down budget for the Borrower for the period commencing after the applicable closing date; and

(d) in the event that Borrower has not failed to comply with clause (b)(i) of this definition, Borrower's (i) failure to file a plan of reorganization and related disclosure statement with the Bankruptcy Court within 90 days after the Petition Date that provides for payment in full in cash of the Obligations upon consummation thereof, (ii) failure to obtain the approval of the Bankruptcy Court to the

disclosure statement and the authorization of the Court to solicit approval of the plan within 120 days after the Petition Date, (iii) obtain within 155 days after the Petition Date an order from the Bankruptcy Court confirming a plan of reorganization which provides for payment in full in cash of the Obligations upon consummation thereof or (iv) failure to consummate such plan of reorganization within 185 days after the Petition Date.

"Term Loan Priority Collateral" has the meaning specified in the Pre-Petition Intercreditor Agreement and, except as used in the definitions of "Unperfected Term Loan Priority Collateral" and "Perfected Term Loan Priority Collateral," shall not include Unperfected Term Loan Priority Collateral.

"Term Loan Priority Proceeds" has the meaning specified in Section 7.11.

"Test Period" has the meaning specified in Section 5.2.

"Title IV Plan" means a pension plan subject to Title IV of ERISA, other than a Multiemployer Plan, to which any ERISA Affiliate incurs or otherwise has any obligation or liability, contingent or otherwise.

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

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

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

"Unencumbered Term Loan Assets" has the meaning specified in Section 2.12(e).

"United States" means the United States of America.

"Unperfected Term Loan Priority Collateral" means Term Loan Priority Collateral the Liens on which that were granted in favor of the "Administrative Agent" and/or "Collateral Agent" (as such terms are defined as of the Closing Date in the Pre-Petition Term Loan Credit Agreement) are not Perfected Term Loan Priority Collateral Liens.

"Unused Commitment Fee" has the meaning specified in Section 2.11(a).

"U.S. Lender Party" means each of the Administrative Agent, each Lender, each L/C Issuer, each SPV and each participant, in each case that is a Domestic Person.

"Voting Agreement" means any voting trust or similar agreement among current and/or former members of the management of Borrower and Odyssey Investment Partners and/or one or more of its Related Parties pursuant to which such current and/or former members of management grant Odyssey Investment Partners and/or its Related Parties the right to vote shares of Borrower's Stock.

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

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

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

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

Section 1.3 Accounting Terms and Principles. (a) GAAP. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. No change in the accounting principles used in the preparation of any Financial Statement hereafter adopted by the Borrower shall be given effect if such change would affect a calculation that measures compliance with any provision of Article VIII unless the Borrower, the Administrative Agent and the Required Lenders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all Financial Statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP.

(b) Pro Forma. All components of financial calculations made to determine compliance with Article VIII shall be adjusted on a Pro Forma Basis to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any Pro Forma Transaction consummated after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by the Borrower based on assumptions expressed therein and that were reasonable based on the information available to the Borrower at the time of preparation of the Compliance Certificate setting forth such calculations.

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

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

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

ARTICLE 2 THE REVOLVING CREDIT FACILITY

Section 2.1 The Commitments. (a) Initial Loan Commitments. On the terms and subject to the conditions contained in this Agreement, each Lender severally, but not jointly, agrees to make a loan (each an "Initial Loan") in Dollars to the Borrower on the Closing Date in an amount not to exceed such Lender's Initial Loan Commitment. Amounts of Initial Loans repaid may not be reborrowed. Each Lender's Initial Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the making of the Initial Loans hereunder. Proceeds of the Initial Loan shall be used on the Closing Date to satisfy in full in cash all Pre-Petition Loans (excluding, in any event, Pre-Petition Letters of Credit).

(b) Incremental Revolving Loan Commitments. On the terms and subject to the conditions contained in this Agreement, each Lender severally, but not jointly, agrees to make loans in Dollars (each an "Incremental Revolving Loan" and together with the Initial Loan, collectively, the "Revolving Loans") to the Borrower from time to time on any Business Day during the period from the date hereof until the Termination Date in an aggregate principal amount at any time outstanding for all such loans by such Lender not to exceed such Lender's Incremental Revolving Loan Commitment; provided, however, that at no time shall any Lender be obligated to make an Incremental Revolving Loan if, after giving effect to the making of such Incremental Revolving Loan, (i) the Incremental Revolving

Credit Outstandings would exceed Incremental Borrowing Availability or (ii) the Revolving Credit Outstandings would exceed Borrowing Availability plus the Permitted Overadvance Amount. Within the limits set forth in the first sentence of this clause (b), amounts of Incremental Revolving Loans repaid may be reborrowed under this Section 2.1.

(c) Orders. Notwithstanding anything to the contrary contained herein, in no event shall any Lender or L/C Issuer be obligated to make any Loan or Issue any Letter of Credit in an amount exceeding that permitted at that time by the applicable Order.

(d) [omitted]

Section 2.2 Borrowing Procedures. (a) Notice From the Borrower. Each Borrowing shall be made on notice given by the Borrower to the Administrative Agent not later than 1:00 p.m. (New York time) on (i) the first Business Day, in the case of a Borrowing of Base Rate Loans and (ii) the third Business Day, in the case of a Borrowing of Eurodollar Rate Loans, prior to the date of the proposed Borrowing. Each such notice may be made in a writing substantially in the form of Exhibit C (a "Notice of Borrowing") duly completed or by telephone if confirmed promptly, but in any event within one Business Day and prior to such Borrowing, with such a Notice of Borrowing. Loans shall be made as Base Rate Loans unless, outside of a suspension period pursuant to Section 2.15, the Notice of Borrowing specifies that all or a portion thereof shall be Eurodollar Rate Loans. Each Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000.

(b) Notice to Each Lender. The Administrative Agent shall give to each Lender prompt notice of the Administrative Agent's receipt of a Notice of Borrowing and, if Eurodollar Rate Loans are properly requested in such Notice of Borrowing, prompt notice of the applicable interest rate. Each Lender shall, before 3:00 p.m. (New York time) on the date of the proposed Borrowing in the case of Base Rate Loans and before 1:00 p.m. (New York time) on the date of the proposed Borrowing in the case of Eurodollar Rate Loans, make available to the Administrative Agent at its address referred to in Section 11.11, such Lender's Pro Rata Share of such proposed Borrowing. Upon fulfillment or due waiver (i) on the Closing Date, of the applicable conditions set forth in Section 3.1 and (ii) on the Closing Date and any time thereafter, of the applicable conditions set forth in Section 3.2, the Administrative Agent shall make such funds available to the Borrower.

(c) Non-Funding Lenders. Unless the Administrative Agent shall have received notice from any Lender prior to the date such Lender is required to make any payment hereunder with respect to any Loan or any participation in any Swing Loan or Letter of Credit that such Lender will not make such payment (or any portion thereof) available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such payment available to the Administrative Agent on the date such payment is required to be made in accordance with this Article II and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. The Borrower agrees to repay to the Administrative Agent on demand such amount (until repaid by such Lender) with interest thereon for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at the interest rate applicable to the Obligation that would have been created when the Administrative Agent made available such amount to the Borrower had such Lender made a corresponding payment available; provided, however, that such payment shall not relieve such Lender of any obligation it may have to the Borrower, the Swingline Lender or any L/C Issuer. In addition, any Lender that shall not have made available to the Administrative Agent any portion of any payment described above (any such Lender, a "Non-Funding Lender") agrees to pay such amount to the Administrative Agent on demand together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Administrative Agent, at the Federal Funds Rate for the first Business Day and

thereafter (i) in the case of a payment in respect of a Loan, at the interest rate applicable at the time to such Loan and (ii) otherwise, at the interest rate applicable to Base Rate Loans under the Revolving Credit Facility. Such repayment shall then constitute the funding of the corresponding Loan (including any Loan deemed to have been made hereunder with such payment) or participation. The existence of any Non-Funding Lender shall not relieve any other Lender of its obligations under any Loan Document, but no other Lender shall be responsible for the failure of any Non-Funding Lender to make any payment required under any Loan Document.

Section 2.3 Swing Loans. (a) Availability. On the terms and subject to the conditions contained in this Agreement, the Swingline Lender may, in its sole discretion, make loans in Dollars (each a "Swing Loan") available to the Borrower under the Revolving Credit Facility from time to time on any Business Day during the period from the date hereof until the Termination Date in an aggregate principal amount at any time outstanding not to exceed the lesser of (A) its Swingline Commitment and (B) Incremental Borrowing Availability; provided, however, that the Swingline Lender may not make any Swing Loan (x) in the period commencing on the first Business Day after it receives notice from the Administrative Agent or the Required Lenders that one or more of the conditions precedent contained in Section 3.2 are not satisfied and ending when such conditions are satisfied or duly waived, and (y) if, after giving effect to the making of such Swing Loan, (i) the Incremental Revolving Credit Outstandings would exceed Incremental Borrowing Availability or (ii) the Revolving Credit Outstandings would exceed Borrowing Availability plus the Permitted Overadvance Amount. In connection with the making of any Swing Loan, the Swingline Lender may but shall not be required to determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived. Each Swing Loan shall be a Base Rate Loan and must be repaid in full on the earliest of (i) the funding date of any Borrowing of Revolving Loans and (ii) the Termination Date. Within the limits set forth in the first sentence of this clause (a), amounts of Swing Loans repaid may be reborrowed under this clause (a).

(b) Borrowing Procedures. In order to request a Swing Loan, the Borrower shall give to the Administrative Agent a notice to be received not later than 1:00 p.m. (New York time) on the day of the proposed borrowing, which may be made in a writing substantially in the form of Exhibit D duly completed (a "Swingline Request") or by telephone if confirmed promptly but, in any event, prior to such borrowing, with such a Swingline Request. In addition, if any Notice of Borrowing requests a Borrowing of Base Rate Loans, the Swing Line Lender may, notwithstanding anything else to the contrary in Section 2.2, make a Swing Loan available to the Borrower in an aggregate amount not to exceed such proposed Borrowing, and the aggregate amount of the corresponding proposed Borrowing shall be reduced accordingly by the principal amount of such Swing Loan. The Administrative Agent shall promptly notify the Swingline Lender of the details of the requested Swing Loan. Upon receipt of such notice and subject to the terms of this Agreement, the Swingline Lender may make a Swing Loan available to the Borrower by making the proceeds thereof available to the Administrative Agent and, in turn, the Administrative Agent shall make such proceeds available to the Borrower on the date set forth in the relevant Swingline Request.

(c) Refinancing Swing Loans. The Swingline Lender may at any time forward a demand to the Administrative Agent (which the Administrative Agent shall, upon receipt, forward to each Lender) that each Lender pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Pro Rata Share of all or a portion of the outstanding Swing Loans. Each Lender shall pay such Pro Rata Share to the Administrative Agent for the account of the Swingline Lender. Upon receipt by the Administrative Agent of such payment, such Lender shall be deemed to have made an Incremental Revolving Loan to the Borrower, which, upon receipt of such payment by the Swingline Lender from the Administrative Agent, the Borrower shall be deemed to have used in whole to refinance such Swing Loan. If any payment made by any Lender as a result of any such demand is not deemed an Incremental

Revolving Loan, such payment shall be deemed a funding by such Lender of such participation. Such participation shall not be otherwise required to be funded. Upon receipt by the Swingline Lender of any payment from any Lender pursuant to this clause (c) with respect to any portion of any Swing Loan, the Swingline Lender shall promptly pay over to such Lender all payments of principal (to the extent received after such payment by such Lender) and interest (to the extent accrued with respect to periods after such payment) received by the Swingline Lender with respect to such portion.

(d) Obligation to Fund Absolute. Each Lender's obligations pursuant to clause (c) above shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including (A) the existence of any setoff, claim, abatement, recoupment, defense or other right that such Lender, any Affiliate thereof or any other Person may have against the Swing Loan Lender, any other Secured Party or any other Person, (B) the failure of any condition precedent set forth in Section 3.2 to be satisfied or the failure of the Borrower to deliver any notice set forth in Section 2.2(a) (each of which requirements the Lenders hereby irrevocably waive) and (C) any adverse change in the condition (financial or otherwise) of the Borrower.

Section 2.4 Letters of Credit. (a) Commitment and Conditions. On the terms and subject to the conditions contained herein, each L/C Issuer agrees to Issue, at the request of the Borrower, in accordance with such L/C Issuer's usual and customary business practices, and for the account of the Borrower (or, as long as the Borrower remains responsible for the payment in full of all amounts drawn thereunder and related fees, costs and expenses, for the account of any Group Member), Letters of Credit (denominated in Dollars in a minimum amount of \$250,000 unless otherwise agreed by the applicable L/C Issuer) from time to time on any Business Day during the period from the Closing Date through the earlier of the Termination Date and 10 days prior to the Scheduled Maturity Date; provided, however, that such L/C Issuer shall not be under any obligation to Issue any Letter of Credit upon the occurrence of any of the following, after giving effect to such Issuance:

(i) (A)(x) the Incremental Revolving Credit Outstandings would exceed Incremental Borrowing Availability or (y) the Revolving Credit Outstandings would exceed Borrowing Availability plus the Permitted Overadvance Amount or (B) the L/C Obligations for all Letters of Credit would exceed the L/C Sublimit;

(ii) the expiration date of such Letter of Credit (A) is not a Business Day, (B) is more than 270 days after the date of Issuance thereof or (C) is later than 10 days prior to the Scheduled Maturity Date; or

(iii) (A) any fee due in connection with, and on or prior to, such Issuance has not been paid, (B) such Letter of Credit is requested to be Issued in a form that is not acceptable to such L/C Issuer or (C) such L/C Issuer shall not have received, each in form and substance reasonably acceptable to it and duly executed by the Borrower (and, if such Letter of Credit is issued for the account of any other Group Member, such Group Member), the documents that such L/C Issuer generally uses in the ordinary course of its business for the Issuance of letters of credit of the type of such Letter of Credit (collectively, the "L/C Reimbursement Agreement").

For each such Issuance, the applicable L/C Issuer may, but shall not be required to, determine that, or take notice whether, the conditions precedent set forth in Section 3.2 have been satisfied or waived in connection with the Issuance of any Letter of Credit; provided, however, that no Letter of Credit shall be Issued during the period starting on the first Business Day after the receipt by such L/C Issuer of notice from the Administrative Agent or the Required Lenders that any condition precedent contained in Section 3.2 is not satisfied and ending on the date all such conditions are satisfied or duly waived.

All Roll-Over Letters of Credit shall be deemed to have been Issued under this Agreement and shall constitute Letters of Credit as of the Closing Date.

(b) Notice of Issuance. The Borrower shall give the relevant L/C Issuer and the Administrative Agent a notice of any requested Issuance of any Letter of Credit, which shall be effective only if received by such L/C Issuer and the Administrative Agent not later than 1:00 p.m. (New York time) on the third Business Day prior to the date of such requested Issuance. Such notice may be made in a writing substantially the form of Exhibit E duly completed or in a writing in any other form acceptable to such L/C Issuer (an "L/C Request") or by telephone if confirmed promptly, but in any event within one Business Day and prior to such Issuance, with such an L/C Request.

(c) Reporting Obligations of L/C Issuers. Each L/C Issuer agrees to provide the Administrative Agent (which, after receipt, the Administrative Agent shall provide to each Lender), in form and substance satisfactory to the Administrative Agent, each of the following on the following dates: (i) on or prior to (A) any Issuance of any Letter of Credit by such L/C Issuer, (B) any drawing under any such Letter of Credit or (C) any payment (or failure to pay when due) by the Borrower of any related L/C Reimbursement Obligation, notice thereof, which shall contain a reasonably detailed description of such Issuance, drawing or payment, (ii) upon the request of the Administrative Agent (or any Lender through the Administrative Agent), copies of any Letter of Credit Issued by such L/C Issuer and any related L/C Reimbursement Agreement and such other documents and information as may reasonably be requested by the Administrative Agent and (iii) on the first Business Day of each calendar week, a schedule of the Letters of Credit Issued by such L/C Issuer, in form and substance reasonably satisfactory to the Administrative Agent, setting forth the L/C Obligations for such Letters of Credit outstanding on the last Business Day of the previous calendar week.

(d) Acquisition of Participations. Upon any Issuance of a Letter of Credit in accordance with the terms of this Agreement resulting in any increase in the L/C Obligations, each Lender shall be deemed to have acquired, without recourse or warranty, an undivided interest and participation in such Letter of Credit and the related L/C Obligations in an amount equal to such Lender's Pro Rata Share of such L/C Obligations.

(e) Reimbursement Obligations of the Borrower. The Borrower agrees to pay to the L/C Issuer of any Letter of Credit each L/C Reimbursement Obligation owing with respect to such Letter of Credit no later than the first Business Day after the Borrower receives notice from such L/C Issuer that payment has been made under such Letter of Credit or that such L/C Reimbursement Obligation is otherwise due (the "L/C Reimbursement Date") with interest thereon computed as set forth in clause (i) below. In the event that any L/C Issuer incurs any L/C Reimbursement Obligation not repaid by the Borrower as provided in this clause (e) (or any such payment by the Borrower is rescinded or set aside for any reason), such L/C Issuer shall promptly notify the Administrative Agent of such failure (and, upon receipt of such notice, the Administrative Agent shall forward a copy to each Lender) and, irrespective of whether such notice is given, such L/C Reimbursement Obligation shall be payable on demand by the Borrower with interest thereon computed (i) from the date on which such L/C Reimbursement Obligation arose to the L/C Reimbursement Date, at the interest rate applicable during such period to Revolving Loans that are Base Rate Loans and (ii) thereafter until payment in full, at the interest rate applicable during such period to past due Revolving Loans that are Base Rate Loans.

(f) Reimbursement Obligations of the Lenders. Upon receipt of the notice described in clause (e) above from the Administrative Agent, each Lender shall pay to the Administrative Agent for the account of such L/C Issuer its Pro Rata Share of such L/C Reimbursement Obligation. By making such payment, such Lender shall be deemed to have made an Incremental Revolving Loan to the Borrower, which, upon receipt thereof by such L/C Issuer, the Borrower shall be deemed to have used in

whole to repay such L/C Reimbursement Obligation. Any such payment that is not deemed an Incremental Revolving Loan shall be deemed a funding by such Lender of its participation in the applicable Letter of Credit and the related L/C Obligations. Such participation shall not otherwise be required to be funded. Upon receipt by any L/C Issuer of any payment from any Lender pursuant to this clause (f) with respect to any portion of any L/C Reimbursement Obligation, such L/C Issuer shall promptly pay over to such Lender all payments received after such payment by such L/C Issuer with respect to such portion.

(g) Obligations Absolute. The obligations of the Borrower and the Lenders pursuant to clauses (d), (e) and (f) above shall be absolute, unconditional and irrevocable and performed strictly in accordance with the terms of this Agreement irrespective of (i) (A) the invalidity or unenforceability of any term or provision in any Letter of Credit, any document transferring or purporting to transfer a Letter of Credit, any Loan Document (including the sufficiency of any such instrument), or any modification to any provision of any of the foregoing, (B) any document presented under a Letter of Credit being forged, fraudulent, invalid, insufficient or inaccurate in any respect or failing to comply with the terms of such Letter of Credit or (C) any loss or delay, including in the transmission of any document, (ii) the existence of any setoff, claim, abatement, recoupment, defense or other right that any Person (including any Group Member) may have against the beneficiary of any Letter of Credit or any other Person, whether in connection with any Loan Document or any other Contractual Obligation or transaction, or the existence of any other withholding, abatement or reduction, (iii) in the case of the obligations of any Lender, (A) the failure of any condition precedent set forth in Section 3.2 to be satisfied (each of which conditions precedent the Lenders hereby irrevocably waive) or (B) any adverse change in the condition (financial or otherwise) of the Borrower and (iv) any other act or omission to act or delay of any kind of any Secured Party or any other Person or any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.4, constitute a legal or equitable discharge of any obligation of the Borrower or any Lender hereunder.

Section 2.5 Reduction and Termination of the Commitments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate in whole at any time and/or reduce in part ratably, from time to time, any unused portion of the Commitments; provided, however, that each partial reduction shall be in an aggregate amount that is an integral multiple of \$1,000,000.

(b) Mandatory. All outstanding Incremental Revolving Loan Commitments shall terminate on the Scheduled Maturity Date.

Section 2.6 Repayment of Loans. The Borrower promises to repay the entire unpaid principal amount of the Revolving Loans and the Swing Loans on the Scheduled Maturity Date.

Section 2.7 Optional Prepayments. The Borrower may prepay the outstanding principal amount of any Loan in whole at any time and/or in part, from time to time, without premium or penalty except that the Borrower will remain liable for any breakage costs that may be owing pursuant to Section 2.16(a) after giving effect to such prepayment; provided, however, that each partial prepayment that is not of the entire outstanding amount shall be in an aggregate amount that is an integral multiple of \$500,000.

Section 2.8 Mandatory Prepayments.

(a) Prepayments from Issuance of Debt and Equity Issuances. (i) Immediately upon the receipt by Borrower or any of its Subsidiaries of the proceeds of (x) the issuance of Stock (other than

issuances permitted under Section 8.4(d)(ii), or (y) the incurrence of Indebtedness by (other than Indebtedness permitted under Section 8.1), Borrower or such Subsidiary shall prepay the Loans in an amount equal to such proceeds, net of underwriting discounts and commissions and other reasonable, documented, out-of-pocket costs associated therewith. The payments shall be applied in accordance with Section 2.12.

(b) [omitted]

(c) Asset Sales and Property Loss Events. Upon receipt on or after the Closing Date by the Borrower or any of its Subsidiaries of Net Cash Proceeds arising from (i) any Sale by any Group Member of any Revolving Credit Priority Collateral, other than Sales of property permitted hereunder in reliance upon any of clauses (a), (c) or (d) of Section 8.4 or (ii) any Property Loss Event with respect to any Revolving Credit Priority Collateral of any Group Member to the extent resulting, in the aggregate with all other such Property Loss Events, in the receipt by any of them of Net Cash Proceeds, the Borrower shall immediately pay or cause to be paid to the Administrative Agent an amount equal to 100% of such Net Cash Proceeds.

(d) Excess Outstandings. On any date on which (i) the aggregate principal amount of Revolving Credit Outstandings exceeds (x) the aggregate Commitments or (y) the Borrowing Base plus the Permitted Overadvance Amount or (ii) the Incremental Borrowing Availability is less than zero, the Borrower shall pay to the Administrative Agent, in reduction of the principal amount of the Revolving Loans, an amount equal to such excess or the amount by which the Incremental Borrowing Availability is less than zero, as applicable. To the extent that any Incremental Revolving Loan or Swing Loan was made, or Letter of Credit was issued, in either case, in excess of Incremental Borrowing Availability, the Borrower shall immediately pay to the Administrative Agent in reduction of the principal amount of the Incremental Revolving Loans or Swing Loans an amount equal to such excess (or, if all Incremental Revolving Loans and Swing Loans have been paid, by providing cash collateral for Letters of Credit in an amount equal to such excess).

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

Section 2.9 Interest. (a) Rate. All Loans and the outstanding amount of all other Obligations (other than pursuant to Secured Hedging Agreements) shall bear interest, in the case of Loans, on the unpaid principal amount thereof from the date such Loans are made and, in the case of such other Obligations, from the date such other Obligations are due and payable until, in all cases, paid in full, except as otherwise provided in clause (c) below, as follows: (i) in the case of Base Rate Loans, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin, each as in effect from time to time, (ii) in the case of Eurodollar Rate Loans, at a rate per annum equal to the sum of the Eurodollar Rate and the Applicable Margin, each as in effect for the applicable Interest Period, and (iii) in the case of other Obligations, at a rate per annum equal to the sum of the Base Rate and the Applicable Margin for Revolving Loans that are Base Rate Loans, each as in effect from time to time.

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

(c) Default Interest. Notwithstanding the rates of interest specified in clause (a) above or elsewhere in any Loan Document, effective immediately upon (A) the occurrence of any Event of Default under Section 9.1(a), or Section 9.1(d) or (B) the delivery of a notice by the Administrative Agent or the Required Lenders to the Borrower during the continuance of any other Event of Default and, in each case, for as long as such Event of Default shall be continuing, the principal balance of all Obligations (including any Obligation that bears interest by reference to the rate applicable to any other Obligation) then due and payable shall bear interest at a rate that is 2% per annum in excess of the interest rate applicable to such Obligations from time to time, payable on demand or, in the absence of demand, on the date that would otherwise be applicable.

Section 2.10 Conversion and Continuation Options. (a) Option. The Borrower may elect (i) in the case of any Eurodollar Rate Loan, (A) to continue such Eurodollar Rate Loan or any portion thereof for an additional Interest Period on the last day of the Interest Period applicable thereto and (B) to convert such Eurodollar Rate Loan or any portion thereof into a Base Rate Loan at any time on any Business Day, subject to the payment of any breakage costs required by Section 2.16(a), and (ii) in the case of Base Rate Loans (other than Swing Loans), to convert such Base Rate Loans or any portion thereof into Eurodollar Rate Loans at any time on any Business Day upon 3 Business Days' prior notice; provided, however, that, (x) for each Interest Period, the aggregate amount of Eurodollar Rate Loans having such Interest Period must be an integral multiple of \$1,000,000 and (y) no conversion in whole or in part of Base Rate Loans to Eurodollar Rate Loans and no continuation in whole or in part of Eurodollar Rate Loans shall be permitted at any time at which (1) an Event of Default shall be continuing and the Administrative Agent or the Required Lenders shall have determined in their sole discretion not to permit such conversions or continuations or (2) such continuation or conversion would be made during a suspension imposed by Section 2.15.

(b) Procedure. Each such election shall be made by giving the Administrative Agent at least 3 Business Days' prior notice in substantially the form of Exhibit F (a "Notice of Conversion or Continuation") duly completed. The Administrative Agent shall promptly notify each Lender of its receipt of a Notice of Conversion or Continuation and of the options selected therein. If the Administrative Agent does not receive a timely Notice of Conversion or Continuation from the Borrower containing a permitted election to continue or convert any Eurodollar Rate Loan, then, upon the expiration of the applicable Interest Period, such Loan shall be automatically converted to a Base Rate Loan. Each partial conversion or continuation shall be allocated ratably among the Lenders in accordance with their Pro Rata Share.

Section 2.11 Fees. (a) Unused Commitment Fee. The Borrower agrees to pay to each Lender a commitment fee on the actual daily amount by which the Commitment of such Lender exceeds its Pro Rata Share of the sum of (i) the aggregate outstanding principal amount of Revolving Loans and (ii) the outstanding amount of the L/C Obligations for all Letters of Credit (the "Unused Commitment Fee") from the date hereof through the Termination Date at a rate per annum equal to 1.00%, payable in arrears (x) on the last day of each calendar month and (y) on the Termination Date.

(b) Letter of Credit Fees. The Borrower agrees to pay, with respect to all Letters of Credit issued by any L/C Issuer, (i) to such L/C Issuer, certain fees, documentary and processing charges as separately agreed between the Borrower and such L/C Issuer or otherwise in accordance with such L/C Issuer's standard schedule in effect at the time of determination thereof and (ii) to the Administrative Agent, for the benefit of the Lenders according to their Pro Rata Shares, a fee accruing at a rate per annum equal to the Applicable Margin for Revolving Loans that are Eurodollar Rate Loans on the maximum undrawn face amount of such Letters of Credit, payable in arrears (A) on the last day of each calendar month, ending after the issuance of such Letter of Credit and (B) on the Termination Date; provided, however, that the fee payable under this clause (ii) shall be increased by 2% per annum and

shall be payable, in addition to being payable on any date it is otherwise required to be paid hereunder, on demand effective immediately upon (x) the occurrence of any Event of Default under Section 9.1(a) or Section 9.1(d) or (y) the delivery of a notice by the Administrative Agent or the Required Lenders to the Borrower during the continuance of any other Event of Default and, in each case, for as long as such Event of Default shall be continuing.

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

Section 2.12 Application of Payments. (a) Application of Voluntary Prepayments. Unless otherwise provided in this Section 2.12 or elsewhere in any Loan Document, all payments and any other amounts received by the Administrative Agent from or for the benefit of the Borrower shall be applied to repay the Obligations the Borrower designates.

(b) Application of Mandatory Prepayments. Subject to the provisions of clause (c) below with respect to the application of payments during the continuance of an Event of Default, any payment made by the Borrower to the Administrative Agent pursuant to Section 2.8(a) or 2.8(c) shall be applied first, to repay the outstanding principal balance of the Initial Loans until paid in full, then to Swing Loans, until paid in full, and then to Incremental Revolving Loans, second, to provide cash collateral to the extent and in the manner in Section 9.3; and, then, except to the extent required to pay other Indebtedness of the Borrower, any excess shall be retained by the Borrower. Subject to the provisions of clause (c) below with respect to the application of payments during the continuance of an Event of Default, any payment made by the Borrower to the Administrative Agent pursuant to Section 2.8(d) shall be applied to Incremental Loans or Swing Loans or to cash collateralize L/C Obligations in respect of Letters of Credit as provided in such Section 2.8(d).

(c) Application of Payments During an Event of Default. The Borrower hereby irrevocably waives, and agrees to cause each other Group Member to waive, the right to direct the application during the continuance of an Event of Default of any and all payments in respect of any Obligation and any proceeds of Collateral and agrees that, notwithstanding the provisions of clause (a) above, the Administrative Agent may, and, upon either (A) the direction of the Required Lenders or (B) the termination of any Commitment or the acceleration of any Obligation pursuant to Section 9.2, shall, apply all payments in respect of any Obligation, all funds on deposit in any Cash Collateral Account and all other proceeds of Collateral (i) first, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Administrative Agent, (ii) second, to pay Obligations in respect of any cost or expense reimbursements, fees or indemnities then due to the Lenders and the L/C Issuers, (iii) third, to pay interest then due and payable in respect of the Loans and L/C Reimbursement Obligations, (iv) fourth, to repay the outstanding principal amounts of the Loans and L/C Reimbursement Obligations, to provide cash collateral for Letters of Credit in the manner and to the extent described in Section 9.3 and (v) fifth, to the ratable payment of all other Obligations.

(d) Application of Payments Generally. All payments that would otherwise be allocated to the Lenders pursuant to this Section 2.12 (other than any payment to be allocated to the Initial Loan) shall instead be allocated first, to repay interest on Swing Loans or any L/C Reimbursement Obligation, in each case for which the Administrative Agent or, as the case may be, the L/C Issuer has not then been reimbursed by such Lender or the Borrower, second to pay the outstanding principal amount of the foregoing obligations and third, to repay the Revolving Loans. All repayments of any Revolving Loans shall be applied first, to repay such Loans outstanding as Base Rate Loans and then, to repay such Loans outstanding as Eurodollar Rate Loans, with those Eurodollar Rate Loans having earlier expiring

Interest Periods being repaid prior to those having later expiring Interest Periods; provided that, unless otherwise elected by the Borrower, the Borrowing of Revolving Loans on the Closing Date in the amount identified by the Borrower in its initial Notice of Borrowing and classified by the Borrower as "Refinancing Indebtedness" under the Senior Subordinated Notes Indenture shall be paid after all other Revolving Loans. If sufficient amounts are not available to repay all outstanding Obligations described in any priority level set forth in this Section 2.12, the available amounts shall be applied, unless otherwise expressly specified herein, to such Obligations ratably based on the proportion of the Secured Parties' interest in such Obligations. Any priority level set forth in this Section 2.12 that includes interest shall include all such interest, whether or not accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding.

(e) In the event that (i) the Obligations are secured by Term Loan Priority Collateral (as such term is defined in the Intercreditor Agreement) that, as of the date of the commencement of the Chapter 11 Case, is not subject to an Existing Lien held by the Term Loan Agent (as such term is defined in the Intercreditor Agreement) in its capacity as such ("Unencumbered Term Loan Assets"), and (ii) the Obligations are paid in full in cash pursuant to a plan of reorganization or pursuant to a sale of assets that includes Unencumbered Term Loan Assets under section 363 of the Bankruptcy Code, the proceeds of the Unencumbered Term Loan Assets shall be deemed applied to the Obligations prior to the proceeds of liens in other property securing the Obligations.

Section 2.13 Payments and Computations. (a) Procedure. The Borrower shall make each payment under any Loan Document not later than 2:00 p.m. (New York time) on the day when due to the Administrative Agent by wire transfer to the following account (or at such other account or by such other means to such other address as the Administrative Agent shall have notified the Borrower in writing within a reasonable time prior to such payment) in immediately available Dollars and without setoff or counterclaim:

ABA No. 021-001-033
Account Number 502-797-91
Deutsche Bank Trust Company Americas, New York, New York
Account Name: GECC/CAF Depository,
Reference: CFN [8845] - GE Capital Re Dayton Superior Corporation
Debtor-in-Possession Revolving Credit Agreement

The Administrative Agent shall promptly thereafter cause to be distributed immediately available funds relating to the payment of principal, interest or fees to the Lenders, in accordance with the application of payments set forth in Section 2.12. The Lenders shall make any payment under any Loan Document in immediately available Dollars and without setoff or counterclaim. Each Lender shall make each payment for the account of any L/C Issuer or Swingline Lender required pursuant to Section 2.3 or 2.4 prior to 3:00 p.m. (New York time) on the Business Day immediately succeeding the Business Day on which demand or notice, as applicable, has been given to such Lender. Payments received by the Administrative Agent after 3:00 p.m. (New York time) shall be deemed to be received on the next Business Day.

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

and "Base Rate", respectively) and shall be conclusive, binding and final for all purposes, absent manifest error.

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

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

Section 2.14 Evidence of Debt. (a) Records of Lenders. Each Lender shall maintain in accordance with its usual practice accounts evidencing Indebtedness of the Borrower to such Lender resulting from each Loan of such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. In addition, each Lender having sold a participation in any of its Obligations or having identified an SPV as such to the Administrative Agent, acting as agent of the Borrower solely for this purpose and solely for tax purposes, shall establish and maintain at its address referred to in Section 11.11 (or at such other address as such Lender shall notify the Borrower) a record of ownership, in which such Lender shall register by book entry (A) the name and address of each such participant and SPV (and each change thereto, whether by assignment or otherwise) and (B) the rights, interest or obligation of each such participant and SPV in any Obligation, in any Commitment and in any right to receive any payment hereunder.

(b) Records of Administrative Agent. The Administrative Agent, acting as agent of the Borrower solely for tax purposes and solely with respect to the actions described in this Section 2.14, shall establish and maintain at its address referred to in Section 11.11 (or at such other address as the Administrative Agent may notify the Borrower) (A) a record of ownership (the "Register") in which the Administrative Agent agrees to register by book entry the interests (including any rights to receive payment hereunder) of the Administrative Agent, each Lender and each L/C Issuer in the Revolving Credit Outstandings, each of their obligations under this Agreement to participate in each Loan, Letter of Credit and L/C Reimbursement Obligation, and any assignment of any such interest, obligation or right and (B) accounts in the Register in accordance with its usual practice in which it shall record (1) the names and addresses of the Lenders and the L/C Issuers (and each change thereto pursuant to Section 2.18 (Substitution of Lenders) and Section 11.2 (Assignments and Participations; Binding Effect)), (2) the Commitments of each Lender, (3) the amount of each Loan and each funding of any participation described in clause (A) above, for Eurodollar Rate Loans, the Interest Period applicable thereto, (4) the amount of any principal or interest due and payable or paid, (5) the amount of the L/C Reimbursement Obligations due and payable or paid and (6) any other payment received by the Administrative Agent from the Borrower and its application to the Obligations.

(c) Registered Obligations. Notwithstanding anything to the contrary contained in this Agreement, the Loans (including any Notes evidencing such Loans and, in the case of Revolving

Loans, the corresponding obligations to participate in L/C Obligations and Swing Loans) and the L/C Reimbursement Obligations are registered obligations, the right, title and interest of the Lenders and the L/C Issuers and their assignees in and to such Loans or L/C Reimbursement Obligations, as the case may be, shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 2.14 and Section 11.2 shall be construed so that the Loans and L/C Reimbursement Obligations are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related regulations (and any successor provisions).

(d) Prima Facie Evidence. The entries made in the Register and in the accounts maintained pursuant to clauses (a) and (b) above shall, to the extent permitted by applicable Requirements of Law, be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, however, that no error in such account and no failure of any Lender or the Administrative Agent to maintain any such account shall affect the obligations of the Borrower to repay the Loans in accordance with their terms. In addition, the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall treat each Person whose name is recorded in the Register as a Lender or L/C Issuer, as applicable, for all purposes of this Agreement. Information contained in the Register with respect to any Lender or any L/C Issuer shall be available for access by the Borrower, the Administrative Agent, such Lender or such L/C Issuer at any reasonable time and from time to time upon reasonable prior notice. No Lender or L/C Issuer shall, in such capacity, have access to or be otherwise permitted to review any information in the Register other than information with respect to such Lender or L/C Issuer unless otherwise agreed by the Administrative Agent.

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

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

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

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

obligation of such Lender to make or to continue Eurodollar Rate Loans shall be suspended as provided in clause (c) below until such Lender shall, through the Administrative Agent, notify the Borrower that it has determined that it may lawfully make Eurodollar Rate Loans.

(c) Effect of Suspension. If the obligation of any Lender to make or to continue Eurodollar Rate Loans is suspended, (A) the obligation of such Lender to convert Base Rate Loans into Eurodollar Rate Loans shall be suspended, (B) such Lender shall make a Base Rate Loan at any time such Lender would otherwise be obligated to make a Eurodollar Rate Loan, (C) the Borrower may revoke any pending Notice of Borrowing or Notice of Conversion or Continuation to make or continue any Eurodollar Rate Loan or to convert any Base Rate Loan into a Eurodollar Rate Loan and (D) each Eurodollar Rate Loan of such Lender shall automatically and immediately (or, in the case of any suspension pursuant to clause (a) above, on the last day of the current Interest Period thereof) be converted into a Base Rate Loan.

Section 2.16 Breakage Costs; Increased Costs; Capital Requirements. (a) Breakage Costs. The Borrower shall compensate each Lender, upon demand from such Lender to the Borrower (with copy to the Administrative Agent), for all Liabilities (including, in each case, those incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to prepare to fund, to fund or to maintain the Eurodollar Rate Loans of such Lender to the Borrower but excluding any loss of the Applicable Margin on the relevant Loans) that such Lender may incur (A) to the extent, for any reason other than solely by reason of such Lender being a Non-Funding Lender, a proposed Borrowing, conversion into or continuation of Eurodollar Rate Loans does not occur on a date specified therefor in a Notice of Borrowing or a Notice of Conversion or Continuation or in a similar request made by telephone by the Borrower, (B) to the extent any Eurodollar Rate Loan is paid (whether through a scheduled, optional or mandatory prepayment) or converted to a Base Rate Loan (including because of Section 2.15) on a date that is not the last day of the applicable Interest Period or (C) as a consequence of any failure by the Borrower to repay Eurodollar Rate Loans when required by the terms hereof. For purposes of this clause (a), each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it using a matching deposit or other borrowing in the London interbank market.

(b) Increased Costs. If at any time any Lender or L/C Issuer determines that, after the date hereof, the adoption of, or any change in or in the interpretation, application or administration of, or compliance with, any Requirement of Law (other than any imposition or increase of Eurodollar Reserve Requirements) from any Governmental Authority shall have the effect of (i) increasing the cost to such Lender of making, funding or maintaining any Eurodollar Rate Loan or to agree to do so or of participating, or agreeing to participate, in extensions of credit, (ii) increasing the cost to such L/C Issuer of Issuing or maintaining any Letter of Credit or of agreeing to do so or (iii) imposing any other cost to such Lender or L/C Issuer with respect to compliance with its obligations under any Loan Document, then, upon demand by such Lender or L/C Issuer (with copy to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender or L/C Issuer amounts sufficient to compensate such Lender or L/C Issuer for such increased cost; provided, however, that this Section 2.16(b) shall not apply to any increase in or imposition of any taxes which shall be governed by Section 2.17.

(c) Increased Capital Requirements. If at any time any Lender or L/C Issuer determines that, after the date hereof, the adoption of, or any change in or in the interpretation, application or administration of, or compliance with, any Requirement of Law (other than any imposition or increase of Eurodollar Reserve Requirements) from any Governmental Authority regarding capital adequacy, reserves, special deposits, compulsory loans, insurance charges against property of, deposits with or for the account of, Obligations owing to, or other credit extended or participated in by, any Lender or L/C Issuer or any similar requirement (in each case other than any imposition or increase of Eurodollar

Reserve Requirements) shall have the effect of reducing the rate of return on the capital of such Lender's or L/C Issuer (or any corporation controlling such Lender or L/C Issuer) as a consequence of its obligations under or with respect to any Loan Document or Letter of Credit to a level below that which, taking into account the capital adequacy policies of such Lender, L/C Issuer or corporation, such Lender, L/C Issuer or corporation could have achieved but for such adoption or change, then, upon demand from time to time by such Lender or L/C Issuer (with a copy of such demand to the Administrative Agent), the Borrower shall pay to the Administrative Agent for the account of such Lender amounts sufficient to compensate such Lender for such reduction.

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

Section 2.17 Taxes. (a) Payments Free and Clear of Taxes. Except as otherwise provided in this Section 2.17, each payment by the Borrower under any Loan Document shall be made free and clear of and without deduction for all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto (and without deduction for any of them) (collectively, the "Taxes") other than for (i) taxes measured by net income (including branch profits taxes) and franchise taxes imposed in lieu of net income taxes, in each case imposed on any Secured Party as a result of a present or former connection between such Secured Party and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than such connection arising solely from any Secured Party having executed, delivered or performed its obligations or received a payment under, or enforced, any Loan Document) or (ii) taxes that are directly attributable to the failure (other than as a result of a change in any Requirement of Law) by any Secured Party to deliver the documentation required to be delivered pursuant to clause (f) below (all such non-excluded taxes, "Non-Excluded Taxes").

(b) Gross-Up. If any Taxes shall be required by law to be deducted from or in respect of any amount payable under any Loan Document (other than any Secured Hedging Agreement) to any Secured Party (i) in the case of Non-Excluded Taxes, such amount shall be increased as necessary to ensure that, after all required deductions for Non-Excluded Taxes are made (including deductions of Non-Excluded Taxes applicable to any increases to any amount under this Section 2.17), such Secured Party receives the amount it would have received had no such deductions been made, (ii) the Borrower shall make deductions for all relevant Taxes, (iii) the Borrower shall timely pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable Requirements of Law and (iv) within 30 days after such payment is made, the Borrower shall deliver to the Administrative Agent an original or certified copy of a receipt evidencing such payment or, if a receipt is not available, other evidence of payment reasonably satisfactory to the Administrative Agent in the Administrative Agent's sole discretion; provided, however, that no such increase shall be made with respect to, and Borrower shall not be required to indemnify any such Secured Party pursuant to clause (d) below for, withholding taxes to the extent that the obligation to withhold amounts existed on the date that such Secured Party became a "Secured Party" under this Agreement in the capacity under which such Secured Party makes a claim under this clause (b), except in each case to the extent such Secured Party is a direct or indirect assignee (other than pursuant to Section 2.18 (Substitution of Lenders)) of any other Secured Party that was entitled, at the time the assignment of such other Secured Party became effective, to receive additional amounts under this clause (b).

(c) Other Taxes. In addition, the Borrower agrees to pay, and authorizes the Administrative Agent to pay in its name, any stamp, documentary, excise or property tax, charges or

similar levies imposed by any applicable Requirement of Law or Governmental Authority and all Liabilities with respect thereto (including by reason of any delay in payment thereof), in each case arising from the execution, delivery or registration of, or otherwise with respect to, any Loan Document or any transaction contemplated therein (collectively, "Other Taxes"). The Swingline Lender may, without any need for notice, demand or consent from the Borrower, by making funds available to the Administrative Agent in the amount equal to any such payment, make a Swing Loan to the Borrower in such amount, the proceeds of which shall be used by the Administrative Agent in whole to make such payment. Within 30 days after the date of any payment of Taxes or Other Taxes by the Borrower pursuant to this Section 2.17, the Borrower shall furnish to the Administrative Agent, at its address referred to in Section 11.11, the original or a certified copy of a receipt evidencing payment thereof or, if a receipt is not available, other evidence of payment reasonably acceptable to the Administrative Agent in the Administrative Agent's sole discretion.

(d) Indemnification. The Borrower shall reimburse and indemnify, within 30 days after receipt of demand therefor (with copy to the Administrative Agent), each Secured Party for all Non-Excluded Taxes and Other Taxes (including any such Non-Excluded Taxes and Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.17) paid by such Secured Party and any Liabilities arising therefrom or with respect thereto (other than any taxes referred to in clauses (i) and (ii) of Section 2.17(a)), whether or not such Non-Excluded Taxes or Other Taxes were correctly or legally asserted. A certificate of the Secured Party (or of the Administrative Agent on behalf of such Secured Party) claiming any compensation under this clause (d), setting forth a calculation of the amounts to be paid thereunder and delivered to the Borrower with a copy to the Administrative Agent, shall be conclusive, binding and final for all purposes, absent manifest error.

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

(f) Tax Forms. (i) Each Non-U.S. Lender Party that, at any of the following times, is entitled to an exemption from United States withholding tax or is subject to such withholding tax at a reduced rate under an applicable tax treaty, shall (w) on or prior to the date such Non-U.S. Lender Party becomes a "Non-U.S. Lender Party" hereunder, (x) on or prior to the date on which any such form or certification expires or becomes obsolete, (y) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (i) and (z) from time to time if requested by the Borrower or the Administrative Agent (or, in the case of a participant or SPV, the relevant Lender), provide the Administrative Agent and the Borrower (or, in the case of a participant or SPV, the relevant Lender) with two properly completed and duly executed originals of each of the following, as applicable: (A) Forms W-8ECI (claiming exemption from U.S. withholding tax because the income is effectively connected with a U.S. trade or business), W-8BEN (claiming exemption from, or a reduction of, U.S. withholding tax under an income tax treaty) and/or W-8IMY (together with any required accompanying forms) or any successor forms, (B) in the case of a Non-U.S. Lender Party claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN (claiming exemption from U.S. withholding tax under the portfolio interest exemption) or any successor form and a certificate in form and substance acceptable to the Administrative Agent that such Non-U.S. Lender Party is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code or (C) any other applicable document prescribed by the IRS certifying as to the entitlement of such Non-U.S. Lender Party to such exemption from United States withholding tax or reduced rate with respect to all payments to be made to such Non-

U.S. Lender Party under the Loan Documents. Unless the Borrower and the Administrative Agent have received forms or other documents satisfactory to them indicating that payments under any Loan Document to or for a Non-U.S. Lender Party are not subject to United States withholding tax, the Borrower and the Administrative Agent shall withhold amounts required to be withheld by applicable Requirements of Law from such payments at the applicable statutory rate or at a reduced rate under an applicable tax treaty.

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

(ii) Each Lender having sold a participation in any of its Obligations or identified an SPV as such to the Administrative Agent shall collect from such participant or SPV the documents described in this clause (f) and provide them, along with two properly completed and duly executed originals of Form W-8IMY to the Administrative Agent.

Section 2.18 Substitution of Lenders. (a) Substitution Right. In the event that any Lender that is not an Affiliate of the Administrative Agent (an "Affected Lender"), (i) makes a claim under clause (b) (Increased Costs) or (c) (Increased Capital Requirements) of Section 2.16, (ii) notifies the Borrower pursuant to Section 2.15(b) (Illegality) that it becomes illegal for such Lender to continue to fund or make any Eurodollar Rate Loan, (iii) makes a claim for payment pursuant to Section 2.17(b) or (d) (Taxes), (iv) becomes a Non-Funding Lender or (v) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Required Lenders is obtained but that requires the consent of other Lenders, the Borrower may either pay in full such Affected Lender with respect to amounts due with the consent of the Administrative Agent or substitute for such Affected Lender any Lender or any Affiliate or Approved Fund of any Lender or any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent (in each case, a "Substitute Lender").

(b) Procedure. To substitute such Affected Lender or pay in full the Obligations owed to such Affected Lender, the Borrower shall deliver a notice to the Administrative Agent and such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery to the Administrative Agent by the Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender (including those that will be owed because of such payment), (ii) in the case of a payment in full of the Obligations owing to such Affected Lender, payment of any amount that, after giving effect to the termination of the Commitment of such Affected Lender, is required to be paid pursuant to Section 2.8(d) (Excess Outstandings) and (iii) in the case of a substitution, (A) payment of the assignment fee set forth in Section 11.2(c) and (B) an assumption agreement in form and substance reasonably satisfactory to the Administrative Agent whereby the Substitute Lender shall, among other things, agree to be bound by the terms of the Loan Documents and assume the Commitment of the Affected Lender.

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

Section 2.19 Eligible Accounts. All of the Accounts owned by the Borrower or any of its Domestic Subsidiaries and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Administrative Agent shall be "Eligible Accounts" for purposes of this Agreement, except any Account to which any of the exclusionary criteria set forth below applies. The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Accounts from time to time in its Permitted Discretion. In addition, the Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the criteria set forth below, to establish new criteria and to adjust advance rates with respect to Eligible Accounts, in its Permitted Discretion exercised in good faith, subject to the approval of Supermajority Lenders in the case of adjustments, new criteria or changes in advance rates which have the effect of making more credit available. Eligible Accounts shall not include any Account of the Borrower or its Domestic Subsidiaries:

(a) that does not arise from the sale of goods or the performance of services by the Borrower or a Domestic Subsidiary in the ordinary course of its business;

(b) (i) upon which the Borrower's or a Domestic Subsidiary's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever or (ii) as to which the Borrower or such Domestic Subsidiary is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process, or (iii) if the Account represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor's obligation to pay that invoice is subject to the Borrower's or a Domestic Subsidiary's completion of further performance under such contract or is subject to the equitable Lien of a surety bond issuer;

(c) to the extent that any defense, counterclaim, setoff or dispute is asserted as to such Account;

(d) that is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for merchandise sold to or services rendered and accepted by the applicable Account Debtor;

(e) with respect to which an invoice has not been sent to the applicable Account Debtor;

(f) that (i) is not owned by the Borrower or a Domestic Subsidiary or (ii) is subject to any right, claim, security interest or other interest of any other Person, other than Permitted Liens that are junior to the Lien of the Administrative Agent securing the Obligations);

(g) that arises from a sale to the Borrower, director, officer, other employee or Affiliate of the Borrower, or to any entity that has any common officer or director with the Borrower;

(h) that is the obligation of an Account Debtor that is the United States government or a political subdivision thereof, or any state, county or municipality or department, agency or instrumentality thereof to the extent such obligations in the aggregate exceed \$2,500,000 unless the Administrative Agent, in its sole discretion, has agreed to the contrary in writing and the Borrower or the applicable Domestic Subsidiary, if necessary or desirable, has complied with respect to such obligation with the Federal Assignment of Claims Act of 1940, or any applicable state, county or municipal law restricting the assignment thereof with respect to such obligation;

(i) that is the obligation of an Account Debtor located in a foreign country other than Canada unless payment thereof is assured by a letter of credit assigned and delivered to the Administrative Agent, satisfactory to the Administrative Agent as to form, amount and issuer;

(j) to the extent the Borrower or any Subsidiary thereof is liable for goods sold or services rendered by the applicable Account Debtor to the Borrower or any Subsidiary thereof but only to the extent of the potential offset;

(k) that arises with respect to goods that are delivered on a bill-and-hold, cash-on-delivery basis or placed on consignment, guaranteed sale or other terms by reason of which the payment by the Account Debtor is or may be conditional;

(l) that is in default; provided, that, without limiting the generality of the foregoing, an Account shall be deemed in default upon the occurrence of any of the following:

(i) (x) the Account has not been paid and there has elapsed 120 (but not more than 150) days since its invoice date and the Account is not otherwise ineligible; (y) the Account has not been paid and there has elapsed more than 150 days since its invoice date; or (z) the Account has not been paid and there has elapsed more than 90 days since its due date and it is not an Account taken into account under clause (y);

(ii) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors or fails to pay its debts generally as they come due; or

(iii) a petition is filed by or against any Account Debtor obligated upon such Account under any bankruptcy law or any other federal, state or foreign (including any provincial) receivership, insolvency relief or other law or laws for the relief of debtors;

(m) that is the obligation of an Account Debtor if 50% or more of the Dollar amount of all Accounts owing by that Account Debtor are ineligible under the other criteria set forth in paragraph (l) of this Section 2.19;

(n) as to which the Administrative Agent's Lien thereon, on behalf of itself and Lenders, is not a first priority perfected Lien;

(o) as to which any of the representations or warranties in the Loan Documents are untrue;

(p) to the extent such Account is evidenced by a judgment, Instrument or, except in the case of a Rental, Chattel Paper;

(q) to the extent that such Account, together with all other Accounts owing by such Account Debtor and its Affiliates as of any date of determination exceed 10% of all Eligible Accounts, except as otherwise agreed by the Administrative Agent;

(r) that is payable in any currency other than Dollars;

(s) in the case of any Rental, is not subject to a written lease agreement; or

(t) in the case of any Rental, is not subject to a first priority security interest of the Administrative Agent on behalf of Lenders, perfected by possession of all Chattel Paper related to such Rental by possession or by the filing of a financing statement, which financing statement indicates that a purchase of or security interest in such chattel paper by or in favor of any Person other than the Administrative Agent is violative of the rights of the Administrative Agent.

Section 2.20 Eligible Inventory. All of the Inventory owned by the Borrower or any of its Domestic Subsidiaries and reflected in the most recent Borrowing Base Certificate delivered by the Borrower to the Administrative Agent shall be "Eligible Inventory" for purposes of this Agreement, except any Inventory to which any of the exclusionary criteria set forth below applies. The Administrative Agent shall have the right to establish, modify, or eliminate Reserves against Eligible Inventory from time to time in its Permitted Discretion. In addition, the Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the criteria set forth below, to establish new criteria and to adjust advance rates with respect to Eligible Inventory in its Permitted Discretion exercised in good faith, subject to the approval of Supermajority Lenders in the case of adjustments, new criteria or changes in advance rates which have the effect of making more credit available. Eligible Inventory shall not include any Inventory of the Borrower or a Domestic Subsidiary that:

(a) is not owned by the Borrower or a Domestic Subsidiary free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure the Borrower's or a Domestic Subsidiary's performance with respect to that Inventory), except the Liens in favor of the Administrative Agent, on behalf of itself and Lenders;

(b) (i) except in the case of Inventory on lease to customers in the ordinary course of business (w) is not located on premises located in a state of the United States or the District of Columbia owned, leased or rented by the Borrower or a Domestic Subsidiary and set forth in Schedule 4.16, (x) is stored at a leased location, unless the Administrative Agent has given its prior consent thereto and unless (1) a reasonably satisfactory, landlord waiver has been delivered to the Administrative Agent, or (2) Reserves in an amount equal to three months rent have been established with respect thereto, (y) is stored with a bailee or warehouseman or is in a processor or converter facility unless a reasonably satisfactory, acknowledged waiver or subordination of all Liens and claims by the bailee, warehouseman, processor or converter has been received by the Administrative Agent or Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto, or (z) is located at an owned location subject to a mortgage in favor of a lender other than the Administrative Agent, unless a reasonably satisfactory mortgagee waiver has been delivered to the Administrative Agent or Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto, or (ii) is located at any site if the aggregate book value of Inventory at any such location is less than \$100,000;

(c) is placed on consignment or is in transit, except for Inventory in transit between domestic locations of the Borrower as to which the Administrative Agent's Liens have been perfected at origin and destination;

(d) is covered by a negotiable document of title, unless such document has been delivered to the Administrative Agent with all necessary endorsements, free and clear of all Liens except those in favor of the Administrative Agent and Lenders;

(e) is excess, obsolete, unsaleable, shopworn, seconds, damaged, unfit for sale or customized inventory;

(f) consists of display items or packing or shipping materials, manufacturing supplies, work-in-process Inventory to the extent such work-in-process Inventory in the aggregate exceeds \$5,000,000 or replacement parts;

(g) is not held for sale or lease in the ordinary course of the Borrower's or a Domestic Subsidiary's business;

(h) is not subject to a first priority Lien in favor of the Administrative Agent on behalf of itself and Lenders subject to no other Lien other than Permitted Liens that are junior to the Lien of the Administrative Agent securing the Obligations;

(i) breaches any of the representations or warranties pertaining to Inventory set forth in the Loan Documents;

(j) consists of any costs associated with "freight-in" charges, to the extent such "freight-in" charges can be determined by the Borrower;

(k) consists of Hazardous Materials or goods that can be transported or sold only with licenses that are not readily available;

(l) is not covered by casualty insurance in accordance with Section 7.5;

(m) is being leased to a third party as lessee subject to a lease that is not owned by the Borrower or a Domestic Subsidiary or is subject to a lease owned by the Borrower or a Domestic Subsidiary that is subject to a Lien (other than a Permitted Lien); or

(n) is being leased to a third party as lessee (i) which has commenced a voluntary case or has consented to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case, under the Bankruptcy Code or (ii) with respect to which a court has entered a decree or order for relief in an involuntary case under the Bankruptcy Code.

Section 2.21 Priming and Super Priority Nature of Obligations and Lenders' Liens.

(a) Superpriority Claims and Liens. The Borrower hereby covenants, represents and warrants that, upon entry of the Interim Order (and the Final Order, as applicable), the Obligations of the Borrower under the Loan Documents:

(i) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute allowed administrative expense claims in the Chapter 11 Case having priority over all administrative expenses of the kind specified in Sections 503(b), 507(a) or 507(b) of the Bankruptcy Code

(it being understood that such claim in respect of the Incremental Revolving Loans, Swing Loans, Letters of Credit, all interest thereon and all fees and expenses of the Administrative and the Lenders under this Agreement ("Revolving Superpriority Claims") shall be paid before any administrative expense claims in respect of the Initial Loan and other Obligations not constituting Revolving Superpriority Claims);

(ii) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a perfected first priority Lien on all tangible and intangible property of the Borrower that is not subject to an Existing Lien as of the Petition Date; including, but not limited to claims and causes of action arising under sections 502(d), 544, 545, 547, 548, 549, 550, 551, 553(b), 723(a) or 724(a) of the Bankruptcy Code, the "Avoidance Actions") (it being understood that the Liens so granted on the Avoidance Actions shall be subject to the entry of the Final Order, and the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secure the Initial Loan and other Obligations not constituting Revolving Superpriority Claims);

(iii) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall be secured by a perfected Lien upon all tangible and intangible property of the Borrower that is subject to an Existing Lien as of the Petition Date (other than Primed Liens), junior to such Existing Lien (it being understood that the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secure the Initial Loan and other Obligations not constituting Revolving Superpriority Claims); and

(iv) pursuant to Section 364(d)(1) of the Bankruptcy Code, shall be secured by a perfected first priority Lien, senior and priming to the Primed Liens, on all of the tangible and intangible property of the Borrower other than Term Loan Priority Collateral; provided, however, that the Liens described in this subsection (iv) shall be junior to the Carve-Out, the Existing Liens and to Permitted Senior Prior Liens (as described in the Interim Order and the Final Order, as applicable) (it being understood that the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secure the Initial Loan and other Obligations not constituting Revolving Superpriority Claims);

in the case of each of clauses (i) through (iv) above subject only to the following expenses (the "Carve-Out"): (x) the payment of (i) statutory fees payable to the U.S. Trustee (as defined in the Interim Order) and Clerk of the Bankruptcy Court pursuant to 28 U.S.C. § 1930(a)(6); and (ii) after the occurrence of both an Event of Default and the date that written notice thereof is delivered by the Administrative Agent to counsel to the Borrower declaring that the Carve-Out Trigger Date has occurred (the "Carve-Out Trigger Date"), the following fees and expenses, but only to the extent that there are not sufficient, unencumbered funds in the Borrower's estate to pay such amounts at the time payment is permitted to be made: an amount (the "Case Professionals Carve-Out") equal to the sum of (a) the finally allowed and unpaid professional fees and disbursements for any Case Professional (as defined below) incurred after the Carve-Out Trigger Date in an aggregate amount not in excess of \$1,000,000 for all Case Professionals (as defined in the Interim Order), plus (b) all unpaid professional fees and disbursements of such Case Professionals incurred prior to the Carve-Out Trigger Date in each case to the extent such fees and expenses are ultimately allowed on a final basis by the Bankruptcy Court under Sections 328, 330, or 331 of the Bankruptcy Code and any interim compensation procedures order, but solely to the extent that the same constitute Budgeted Professional Fees. "Budgeted Professional Fees" shall mean those fees and expenses incurred by Case Professionals in accordance with the professional fee schedule which is incorporated as part of the Approved Budget (as defined in the Interim Order). "Case Professionals" shall mean any professional (other than an ordinary course professional) retained by the Borrower and any Statutory Committee pursuant to a final order of the Bankruptcy Court (which order has not been vacated or stayed, unless the stay has been vacated) under Sections 327, 328, 363 or 1103(a) of the Bankruptcy Code. To the extent that any payment to a Case Professional is subsequently disallowed and/or

disgorged, the proceeds of any claim against the Case Professional for amounts so disallowed or disgorged shall constitute Collateral and as such, shall be subject to the liens and claims granted hereunder;

provided that, except as otherwise provided in the Orders (including, without limitation, investigation rights), no portion of the Carve-Out shall be utilized for the payment of professional fees and disbursements incurred in connection with any challenge, contest or litigation as to the amount, extent, priority, validity, perfection or enforcement of the indebtedness of the Borrower owing to the Lenders, Administrative Agent or indemnified parties under the Loan Documents or the Pre-Petition Loans or to the collateral securing the Obligations or the Pre-Petition Loans. The Lenders agree that, so long as the Carve-Out Trigger Date shall not have occurred, the Borrower shall be permitted to pay compensation and reimbursement of expenses allowed and payable under 11 U.S.C. § 328, 11 U.S.C. § 330 and 11 U.S.C. § 331, as the same may be due and payable, and the same shall not reduce the Carve-Out. The foregoing shall not be construed as a consent to the allowance of any fees and expenses referred to above and shall not affect the right of the Administrative Agent and the Lenders to object to the allowance and payment of such amounts.

(b) Real Property. Subject in all respects to the terms of the Orders, the priorities set forth in paragraph (a) above and to the Carve-Out, the Borrower grants to the Administrative Agent on behalf of the Lenders a security interest in, and mortgage on, all of the right, title and interest of the Borrower in all real property owned by the Borrower and the proceeds of all real property leased by the Borrower, together in each case with all of the right, title and interest of the Borrower in and to all buildings, improvements, and fixtures related thereto, all general intangibles relating thereto and all proceeds thereof, subject and junior, in any event, to any validly Existing Liens. The Borrower acknowledges that, pursuant to the Orders, the Liens in favor of the Administrative Agent on behalf of the Lenders in all of such real property shall be perfected without the recordation of any instruments of mortgage or assignment. The Borrower agrees that upon the reasonable request of the Administrative Agent, the Borrower shall promptly enter into separate mortgages in recordable form with respect to such owned properties on terms reasonably satisfactory to the Administrative Agent.

(c) Discharge. The Borrower agrees that (i) its obligations hereunder shall not be discharged by the entry of an order confirming any plan of reorganization (and the Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives any such discharge) and (ii) the Superpriority Claim granted to the Lenders pursuant to the Orders and described in subsection (i) hereof and the Liens granted to the Administrative Agent pursuant to the Orders and the Loan Documents shall not be affected in any manner by the entry of an order confirming any plan of reorganization.

Section 2.22 Payment of Obligations. Notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Interim Order or Final Order, as the case may be, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, Administrative Agent and Lenders shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under applicable law, in accordance with provisions of the Interim Order and the Final Order, as applicable.

ARTICLE 3 CONDITIONS TO LOANS AND LETTERS OF CREDIT

Section 3.1 Conditions Precedent to Initial Loans and Letters of Credit. The obligation of each Lender to make any Loan on the Closing Date and the obligation of each L/C Issuer to

Issue any Letter of Credit on the Closing Date is subject to the satisfaction or due waiver of each of the following conditions precedent on or before [____], 2009:

(a) Loan Documents. Borrower shall have delivered all documents listed on, the taking of all actions set forth on and the satisfaction of all other conditions precedent listed in Part A of the Closing Checklist, all in form and substance, or in a manner reasonably satisfactory to Administrative Agent and Lenders.

(b) Omitted.

(c) Receipt of Interim Financial Statements. Administrative Agent shall have received and be satisfied with, to the extent available, interim unaudited monthly financial statements of the Borrower and its Subsidiaries for each month during the period from January 1, 2009 through March 31, 2009.

(d) Receipt of Business Plans. Administrative Agent shall have received and approved in its sole discretion (i) the Pro Forma Balance Sheet at the Petition Date after giving effect to the transactions contemplated by this Agreement, (ii) the initial Budget for the 13-week period beginning on the Petition Date and (iii) the Business Plan.

(e) Outstanding Debts and Liens. Administrative Agent shall be satisfied that the Prior Lender Obligations shall have been paid or shall concurrently be paid in full in cash at the time (and with the proceeds of) funding of the Initial Loans under this Agreement.

(f) Interim Order. Issuance and entry by the Bankruptcy Court of the Interim Order, by no later than three days after the Petition Date, among other things, (x) granting a first priority perfected security interest in the Collateral subject only as to priority to the Carve-Out and the provisions of paragraph (a) of Section 2.21, and (y) modifying the automatic stay to permit the creation and perfection of Lenders' Liens and, subject to the conditions set forth in the Interim Order, vacating the automatic stay to permit enforcement of Lenders' default-related rights and remedies under this agreement, the other Loan Documents and applicable law, and such Interim Order not have been reversed, modified, amended or stayed.

(g) Pleadings. No pleading or application seeking to amend or modify the provision of this Agreement and the credit facilities provided hereunder on the terms set forth herein shall have been filed in Bankruptcy Court by the Borrower which has not been withdrawn, dismissed or denied within 15 days after filing.

(h) First Day Orders. All First Day Orders entered by the Bankruptcy Court shall be in form and substance reasonably satisfactory to Administrative Agent, other than the Interim Order which shall be acceptable to the Administrative Agent in its sole discretion.

(i) Fees and Expenses. Borrower shall have paid all fees payable on the Closing Date, including fees payable under the Fee Letter. In addition, Borrower will have paid all fees and expenses of counsel to Administrative Agent and Lenders and of the financial advisor to such counsel accrued with respect to this Agreement, the Pre-Petition Credit Agreement and the transactions contemplated thereby, through the Petition Date.

(j) Consents. All consents and approvals of the board of directors, shareholders, governmental entities and other applicable third parties necessary in connection with the Related Transactions shall have been obtained.

(k) Perfection of Liens. All filings, recordings and other actions necessary or in Administrative Agent's opinion desirable to the Liens and security interests in Collateral securing the Obligations shall have been made or taken, or arrangements satisfactory to Administrative Agent and its counsel for the completion thereof shall have been made, except as otherwise agreed in writing by Administrative Agent.

(l) Executory Contracts. Borrower shall have delivered to Administrative Agent a list (and at Administrative Agent's request, copies of) all material unexpired executory contracts and unexpired leases to which Borrower is a party.

(m) No Material Adverse Change. Since December 31, 2008, there shall have occurred no material adverse change in the business, condition (financial or otherwise), operations, performance, properties, projections or prospects of the Borrower, other than any change of the type that customarily occurs as a result of the commencement of a proceeding under Chapter 11 of the Bankruptcy Code.

(n) No Litigation. There shall not be pending any action, suit, investigation, litigation or proceeding in any court or before any arbitrator or governmental instrumentality (other than the Chapter 11 Case) that could reasonably be expected to have a Material Adverse Effect.

(o) PIK Loans. All accrued interest that has not theretofore been added to Pre-Petition Loans and is capable of being added to the Pre-Petition Loans as "PIK Loans" (as such term is defined in the Pre-Petition Credit Agreement) shall have been added to the Pre-Petition Loans in the manner contemplated by the Pre-Petition Credit Agreement, whether or not the interest payment date on which such interest is due shall have occurred (and the Borrower shall be deemed to have elected to have the maximum allowable amount of interest added as a PIK Loan to the Loans on the Closing Date).

Section 3.2 Conditions Precedent to Each Loan and Letter of Credit. Except as otherwise provided herein, no Lender or L/C Issuer shall be obligated to make any Incremental Revolving Loan or Issue any Letter of Credit if, as of the date thereof:

(a) Request. The Administrative Agent (and, in the case of any Issuance, the relevant L/C Issuer) shall not have received, to the extent required by Article II, a written, timely and duly executed and completed Notice of Borrowing or, as the case may be, L/C Request.

(b) Representations and Warranties; No Defaults.

(i) any representation or warranty by the Borrower contained herein or in any other Loan Document is untrue or incorrect in any material respect (without duplication of any materiality qualifier contained herein) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date, and the Administrative Agent or the Required Lenders shall have determined not to make such Incremental Revolving Loan or Issue such Letter of Credit as a result of the fact that such warranty or representation is untrue or incorrect; or

(ii) any Default or Event of Default has occurred and is continuing or would result after making any Loan (or Issuing any Letter of Credit), and the Administrative Agent or the Required Lenders shall have determined not to make any Incremental Revolving Loan or Issue any Letter of Credit as a result of such Default or Event of Default.

(c) Borrowing Availability. The making of the requested Loan or Issuance (as applicable) shall cause the aggregate Incremental Revolving Credit Outstandings to exceed Incremental Borrowing Availability or the Revolving Credit Outstandings to exceed Borrowing Availability plus the Permitted Overadvance Amount; or

(d) Financing Orders. The Interim Order has ceased to be in full force and effect and, if more than thirty-five days has lapsed since the Petition Date, the Final Order has not been entered in the Chapter 11 Case, is not in full force and effect or has been reversed, modified, amended or stayed.

The representations and warranties set forth in any Notice of Borrowing, Swingline Request or L/C Request (or any certificate delivered in connection therewith) shall be deemed to be made again on and as of the date of the relevant Loan or Issuance and the acceptance of the proceeds thereof or of the delivery of the relevant Letter of Credit.

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

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

To induce the Lenders, the L/C Issuers and the Administrative Agent to enter into the Loan Documents, the Borrower represents and warrants to each of them each of the following on and as of each date applicable pursuant to Section 3.2:

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

Section 4.2 Loan and Related Documents.

(a) Power and Authority. The execution, delivery and performance by the Borrower of the Loan Documents and Related Documents to which it is a party and the consummation of the

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

(b) Due Execution and Delivery. From and after its delivery to the Administrative Agent, and upon entry of the Interim Order, each Loan Document and Related Document has been duly executed and delivered to the other parties thereto by the Borrower, is the legal, valid and binding obligation of the Borrower and is enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) Senior Subordinated Notes. The Obligations constitute "Permitted Indebtedness", "Senior Debt" and "Designated Senior Debt" under and as defined in the Senior Subordinated Notes Indenture. No other Indebtedness qualifies as "Permitted Indebtedness", "Senior Debt" or "Designated Senior Debt" under the Senior Subordinated Notes Indenture. The Borrower hereby designates all Obligations and Indebtedness in respect of the Revolving Credit Facility as "Designated Senior Debt" as such term is defined in the Senior Subordinated Notes Indenture.

Section 4.3 Ownership of Group Members. Set forth on Schedule 4.3 is a complete and accurate list showing, as of the Closing Date, for each Group Member and each Subsidiary of any Group Member and each joint venture of any of them, its jurisdiction of organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower. All outstanding Stock of each of them has been validly issued, is fully paid and non-assessable (to the extent applicable) and, except in the case of the Borrower, is owned beneficially and of record by a Group Member free and clear of all Liens other than the security interests in favor of the Prior Administrative Agent and the "Administrative Agent" and "Collateral Agent" under (and as such terms are defined in) the Pre-Petition Term Loan Credit Agreement, any non-consensual Liens arising as a matter of law and permitted under Section 8.2 and, in the case of joint ventures, Permitted Liens. Except as provided in Schedule 4.3, as of the Closing Date, there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Group Member or any of their Subsidiaries of any Stock of any such entity.

Section 4.4 Financial Statements. (a) Each of (i) the audited Consolidated balance sheet of the Borrower as at December 31, 2008 and the related Consolidated statements of income, retained earnings and cash flows of the Borrower for the Fiscal Year then ended, certified by Deloitte & Touche USA LLP and (ii) subject to the absence of footnote disclosure and normal recurring year-end audit adjustments, the unaudited Consolidated balance sheets of the Borrower as at March 31, 2009, and

the related Consolidated statements of income, retained earnings and cash flows of the Borrower for the twelve months then ended, copies of each of which have been furnished to the Administrative Agent, fairly present in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated in accordance with GAAP.

(b) The Business Plan and the Budget delivered on or prior to the date hereof and the updated Budget delivered pursuant to Section 6.8(c) as of the date hereof were prepared or will be prepared, as applicable, in good faith and the assumptions expressed therein are reasonable based on the information available to the Borrower at such date and on the Closing Date.

(c) The unaudited Consolidated balance sheet of the Borrower (the "Pro Forma Balance Sheet") delivered to the Administrative Agent prior to the date hereof, has been prepared as of the last day of the Fiscal Month ending prior to the Closing Date and reflects as of such date, on a Pro Forma Basis for the Related Transactions and the other transactions contemplated herein to occur on the Closing Date, the Consolidated financial condition of the Borrower, and the assumptions expressed therein are reasonable based on the information available to the Borrower at such date and on the Closing Date.

Section 4.5 Material Adverse Effect. Since December 31, 2008, there have been no events, circumstances, developments or other changes in facts that would, in the aggregate, reasonably be expected to have a Material Adverse Effect, other than the filing of the Chapter 11 Case.

Section 4.6 Intercreditor Agreement. Nothing contained in this Agreement, the Interim Order or the Final Order does or will conflict with any material term or provision binding on the Borrower under the Pre-Petition Intercreditor Agreement.

Section 4.7 Litigation. There are no pending (or, to the knowledge of any Group Member, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes affecting the Borrower or any of its Subsidiaries with, by or before any Governmental Authority other than those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.8 Taxes. All federal, state, local and foreign income and franchise and other material tax returns, reports and statements (collectively, the "Tax Returns") required to be filed by any Tax Affiliate have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Tax Affiliate in accordance with GAAP. No Tax Return is under audit or examination by any Governmental Authority and no notice of such an audit or examination or any assertion of any claim for Taxes has been given or made by any Governmental Authority. Proper and accurate amounts have been withheld by each Tax Affiliate from their respective employees for all periods in full and complete compliance with the tax, social security and unemployment withholding provisions of applicable Requirements of Law and such withholdings have been timely paid to the respective Governmental Authorities. No Tax Affiliate has participated in a "listed transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2) or has participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(2) that has not been or will not be properly reported. No Tax Affiliate has been with respect to any open tax year a member of an affiliated, combined or unitary group of which a Tax Affiliate is the common parent.

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

Section 4.10 No Defaults. Except for defaults arising from the filing of the Chapter 11 Case and defaults with respect to which the Bankruptcy Code prohibits or stays the applicable counterparty from taking remedial or other action, no Group Member (and, to the knowledge of each Group Member, no other party thereto) is in default under or with respect to any Contractual Obligation of any Group Member, other than those that would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

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

Section 4.13 ERISA. Schedule 4.13 sets forth, as of the Closing Date, a complete and correct list of, and that separately identifies, (a) all Title IV Plans, (b) all Multiemployer Plans and (c) all material Benefit Plans. Each Benefit Plan, and each trust thereunder, intended to qualify for tax exempt status under Section 401 or 501 of the Code or other Requirements of Law has been determined by the Internal Revenue Service to so qualify and nothing has occurred since such determination that could adversely affect such status. Except for those that would not, in the aggregate, have a Material Adverse Effect, (x) each Benefit Plan is in compliance with applicable provisions of ERISA, the Code and other Requirements of Law, (y) there are no existing or pending (or to the knowledge of any Group Member, threatened) claims (other than routine claims for benefits in the normal course), sanctions, actions, lawsuits or other proceedings or investigation involving any Benefit Plan to which any Group Member incurs or otherwise has or could have an obligation or any Liability and (z) no ERISA Event is reasonably expected to occur. On the Closing Date, no ERISA Event has occurred in connection with which obligations and liabilities (contingent or otherwise) remain outstanding. No ERISA Affiliate would have any Withdrawal Liability in excess of \$500,000 as a result of a complete withdrawal from any Multiemployer Plan on the date this representation is made which Withdrawal Liability could be reasonably likely to require any Group Member to make any payment in satisfaction thereof.

Section 4.14 Environmental Matters. Except as set forth on Schedule 4.14, (a) the operations of each Group Member are and, for the past five years, have been in compliance with all applicable Environmental Laws, including obtaining, maintaining and complying with all Permits required by any applicable Environmental Law, other than non-compliances that, in the aggregate, would not have a reasonable likelihood of resulting in Material Environmental Liabilities, (b) no Group Member is party to, and no Group Member is subject to or, with respect to any real property currently (or to the knowledge of any Group Member previously) owned, leased, subleased, operated or otherwise occupied

by or for any Group Member, the subject of, any Contractual Obligation by any Group Member or any pending (or, to the knowledge of any Group Member, threatened) order, action, suit, proceeding, claim, written demand, dispute or notice of violation or of potential liability or similar notice under or pursuant to any Environmental Law other than those that, in the aggregate, are not reasonably likely to result in Material Environmental Liabilities, (c) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any property of any Group Member and, to the knowledge of any Group Member, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property, (d) no Group Member has caused or permitted to occur a Release of Hazardous Materials at, to or from any real property of any Group Member and each such real property is free of contamination by any Hazardous Materials except for such Release or contamination that could not reasonably be expected to result, in the aggregate, in Material Environmental Liabilities and (e) no Group Member (i) is or has been engaged in, or has permitted any current or former tenant to engage in, operations, or (ii) knows of any facts, circumstances or conditions, including receipt of any information request or notice of potential responsibility under CERCLA or similar Environmental Laws, that, in the aggregate, would have a reasonable likelihood of resulting in Material Environmental Liabilities.

Section 4.15 Intellectual Property. Each Group Member owns or licenses all Intellectual Property that is necessary for the conduct of its businesses as currently conducted. To the knowledge of each Group Member, (a) the conduct and operations of the businesses of each Group Member does not infringe, misappropriate, dilute, violate or otherwise impair any Intellectual Property that is necessary for the conduct of its businesses and owned by any other Person and (b) no other Person has contested any right, title or interest of any Group Member in, or relating to, any Intellectual Property that is necessary for the conduct of its businesses, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. In addition, (x) there are no pending (or, to the knowledge of any Group Member, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes affecting any Group Member with respect to, (y) no judgment or order regarding any such claim has been rendered by any competent Governmental Authority, no settlement agreement or similar Contractual Obligation has been entered into by any Group Member, with respect to and (z) no Group Member knows of any valid basis for any claim based on, any such infringement, misappropriation, dilution, violation or impairment or contest, other than, in each case, as would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 4.16 Title; Real Property. (a) Each Group Member has good fee simple title to all owned real property and valid leasehold interests in all leased real property, and none of such property is subject to any Lien except Permitted Liens.

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

Section 4.17 Full Disclosure. No representation or warranty of the Borrower contained in this Agreement, the Financial Statements referred to in Section 6.1, the other Related Documents or any other document, certificate or written statement furnished to the Administrative Agent or any Lender by or on behalf of any such Person for use in connection with the Loan Documents or the Related Documents contains any untrue statement of a material fact or taken as a whole, omitted, omits or

will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made.

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

Section 4.19 Reorganization Matters.

(a) The Chapter 11 Case was commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (x) the motions seeking approval of the Loan Documents and the Interim Order and Final Order, (y) the hearings for the approval of the Interim Order, and (z) the hearings for the approval of the Final Order will be given. Borrower shall give, on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) From and after the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Case having priority over all administrative expense claims and unsecured claims against the Borrower now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out (it being understood that such claim in respect of the Revolving Superpriority Claims shall be paid before any administrative expense claims in respect of the Initial Loan and other Obligations not constituting Revolving Superpriority Claims).

(c) From and after the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral, subject, as to priority only, to the Carve-Out and the priorities set forth in paragraph (a) of Section 2.21 (it being understood that the Liens so granted to secure the Revolving Superpriority Claims shall be senior to the Liens so granted to secured the Initial Loan and other Obligations not constituting Revolving Superpriority Claims).

(d) The Interim Order (with respect to the period prior to entry of the Final Order) or the Final Order (with respect to the period on and after entry of the Final Order), as the case may be, is in full force and effect has not been reversed, stayed, modified or amended without the Administrative Agent's and Lenders' consent.

ARTICLE 5 FINANCIAL COVENANTS

The Borrower agrees with the Lenders, the L/C Issuers and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

Section 5.1 Minimum Cumulative Consolidated EBITDA. The Borrower shall not permit cumulative Consolidated EBITDA for the period beginning on Petition Date and ending on the last day of any calendar month set forth below to be, on a cumulative basis, less than the minimum amount set forth in the table below opposite such day:

<u>Last Day of Month</u>	<u>Minimum Cumulative Consolidated EBITDA</u>
May 31, 2009	\$10,064,000
June 30, 2009	\$16,584,000
July 31, 2009	\$22,959,000
August 31, 2009	\$28,976,000
September 30, 2009	\$35,598,000
October 31, 2009	\$40,823,000
November 30, 2009	\$44,376,000
December 31, 2009	\$47,546,000
January 31, 2010	\$48,685,000
February 28, 2010	\$50,971,000
March 31, 2010 and thereafter	\$56,597,000

Section 5.2 Budget Compliance. Subject to the terms and conditions set forth below, the proceeds of Loans made under this Agreement shall be used by the Borrower solely for the purposes and up to the amounts set forth in the Budget for the applicable line item during the applicable seven-day period and:

(i) (1) for each Budget Period, minimum total cumulative operating receipts of the Borrower for the period from the first day of such Budget Period through the last day of each week (beginning in each case with the 4th week) within such Budget Period (each such period, a "Test Period"), as compared to total cumulative operating receipts for such Test Period set forth in the Applicable Budgets, shall have no negative variance or a negative variance not to exceed (x) for any Test Period ending on the last day of the 4th, 5th, 6th or 7th week of the first Budget Period, 15% of the amount set forth in the Applicable Budget for such Test Period, (y) for any Test Period ending on the last day of the 8th, 9th, 10th, 11th, 12th or 13th week of the first Budget Period, 10% of the amount set forth in the Applicable Budget for such Test Period, or (z) for any subsequent Test Period, 10% of the amount set forth in the Applicable Budget for such Test Period, (2) for each Budget Period, maximum total cumulative operating disbursements (excluding debt service, professional fees and capital expenditures) of the Borrowers as of the last day of each week within each Test Period shall not exceed the amount set forth in the Applicable Budget for such Test Period by more than 10%, (3) for each Budget Period, maximum cumulative professional fees incurred from the Petition Date through the end of each month shall not exceed the amount set forth in the Applicable Budget for such month by more than 10% and (4) for each Budget Period, maximum cumulative capital expenditures made from the Petition Date through the end of each week within each Test Period shall not exceed the amount set forth in the Applicable Budget for such Test Period by more than 10%;

(ii) to the extent any additional line item is added to the Budget in accordance with the provisions of the Interim Order or the Final Order, such line items shall be subject to the same variance provisions as set forth in Section 5.2(i);

(iii) except as expressly set forth above, no unused portion of any line item in the Budget may be carried forward or carried backward to the same or any other line item for any prior or subsequent seven-day period in the Budget; and

(iv) the Administrative Agent (A) may assume that the Borrower will comply with each Budget to the extent required by this Section 5.2, (B) shall have no duty to monitor such compliance and (C) shall not be obligated to pay (directly or indirectly from the Collateral)

any unpaid expenses incurred or authorized to be incurred pursuant to any Budget. The line items in each Budget for payment of interest, expenses and other amounts to Administrative Agent and Lenders are estimates only, and the Borrower remains obligated to pay any and all Obligations in accordance with the terms of the Loan Documents, the Interim Order and the Final Order. Nothing in any Budget (including any estimates of a loan balance in excess of restrictions imposed by the Borrowing Base, Borrowing Availability, or Incremental Borrowing Availability) shall constitute an amendment or other modification of this Agreement or any of such restrictions or other lending limits set forth therein.

ARTICLE 6 REPORTING COVENANTS

The Borrower agrees with the Lenders, the L/C Issuers and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

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

(a) Monthly Reports. As soon as available, and in any event within 30 days after the end of each of the first two Fiscal Months in each Fiscal Quarter, the Consolidated unaudited balance sheet of the Borrower as of the close of such Fiscal Month and related Consolidated statements of income and cash flow for such Fiscal Month and that portion of the Fiscal Year ending as of the close of such Fiscal Month, setting forth in comparative form the figures for the corresponding period in the prior Fiscal Year and the corresponding consolidated figures from the Business Plan and the Budget, in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(b) Quarterly Reports. As soon as available, and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, the Consolidated unaudited balance sheet of the Borrower as of the close of such Fiscal Quarter and related Consolidated statements of income and cash flow for such Fiscal Quarter and that portion of the Fiscal Year ending as of the close of such Fiscal Quarter, setting forth in comparative form the figures for the corresponding period in the prior Fiscal Year and the figures contained in the Business Plan and the Budget, in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(c) Annual Reports. As soon as available, and in any event within 90 days after the end of each Fiscal Year, the Consolidated balance sheet of the Borrower as of the end of such year and related Consolidated statements of income, stockholders' equity and cash flow for such Fiscal Year, each prepared in accordance with GAAP, together with a certification by the Group Members' Accountants that such Consolidated Financial Statements fairly present in all material respects the Consolidated financial position, results of operations and cash flow of the Borrower as at the dates indicated and for the periods indicated therein in accordance with GAAP without qualification as to the scope of the audit and without any other similar qualification.

(d) Compliance Certificate. Together with each delivery of any Financial Statement pursuant to clause (a), (b) or (c) above, a Compliance Certificate duly executed by a Responsible Officer

of the Borrower that, among other things, demonstrates compliance with the covenant set forth in Section 5.1 and states that, to the best of his or her knowledge, no Default is continuing as of the date of delivery of such Compliance Certificate or, if a Default is continuing, states the nature thereof and the action that the Borrower proposes to take with respect thereto.

(e) Corporate Chart and Other Collateral Updates. As part of the Compliance Certificate delivered pursuant to clause (d) above, each in form and substance satisfactory to the Administrative Agent, a certificate by a Responsible Officer of the Borrower that (i) the Corporate Chart attached thereto (or the last Corporate Chart delivered pursuant to this clause (e)) is correct and complete as of the date of such Compliance Certificate, (ii) the Borrower has delivered all documents (including updated schedules as to locations of Collateral and acquisition of Intellectual Property or real property) they are required to deliver pursuant to any Loan Document on or prior to the date of delivery of such Compliance Certificate and (iii) complete and correct copies of all documents modifying any term of any Constituent Document of any Group Member or any Subsidiary or joint venture thereof on or prior to the date of delivery of such Compliance Certificate have been delivered to the Administrative Agent or are attached to such certificate.

(f) Additional Projections. As soon as available and in any event not later than 60 days prior to the end of each Fiscal Year (i) Projections for the period beginning on January 1, 2010 and ending on the Scheduled Maturity Date and (ii) any significant revisions to, (x) the annual business plan of the Group Members for the Fiscal Year next succeeding such Fiscal Year and (y) forecasts prepared by management of the Borrower (A) for each Fiscal Quarter in such next succeeding Fiscal Year and (B) for each other succeeding Fiscal Year through the Fiscal Year containing the Scheduled Maturity Date, in each case including in such forecasts (1) a projected year-end Consolidated balance sheet, income statement and statement of cash flows, (2) a statement of all of the material assumptions on which such forecasts are based and (3) substantially the same type of financial information as that contained in the Initial Projections.

(g) Management Discussion and Analysis. Together with each delivery of any Compliance Certificate pursuant to clause (d) above, a discussion and analysis of the financial condition and results of operations of the Group Members for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous Fiscal Year.

(h) Audit Reports, Management Letters, Etc. Together with each delivery of any Financial Statement for any Fiscal Year pursuant to clause (c) above, copies of each management letter, audit report or similar letter or report received by any Group Member from any independent registered certified public accountant (including the Group Members' Accountants) in connection with such Financial Statements or any audit thereof, each certified to be complete and correct copies by a Responsible Officer of the Borrower as part of the Compliance Certificate delivered in connection with such Financial Statements.

(i) Insurance. Together with each delivery of any Financial Statement for any Fiscal Year pursuant to clause (c) above, each in form and substance reasonably satisfactory to the Administrative Agent and certified as complete and correct by a Responsible Officer of the Borrower as part of the Compliance Certificate delivered in connection with such Financial Statements, a summary of all material insurance coverage maintained as of the date thereof by any Group Member, together with such other related documents and information as the Administrative Agent may reasonably require.

(j) Additional Deliveries.

(i) Weekly, on Monday of each week:

(A) a Borrowing Base Certificate with respect to the Borrower and its Domestic Subsidiaries, accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion (in substantially the same form as Exhibit 6.1(j), the "Borrowing Base Certificate") as at Friday of the immediately preceding week;

(B) with respect to the Borrower and its Domestic Subsidiaries, a summary of Inventory by location and, to the extent available, by type with a supporting perpetual Inventory report, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion; and

(C) with respect to the Borrower, a monthly trial balance showing Accounts outstanding aged from invoice date as follows: 1 to 30 days, 31 to 60 days, 61 to 90 days, 91 to 120 days, 121 to 150 days and 150 days or more, accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion; and

(D) an aging of accounts payable and a reconciliation of that accounts payable aging to the Borrower's general ledger and monthly Financial Statements delivered pursuant to this Section 6.1, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion.

(ii) To the Administrative Agent, on a weekly basis or at such more frequent intervals as the Administrative Agent may reasonably request from time to time (together with a copy of all or any part of such delivery requested by any Lender in writing after the Closing Date), collateral reports with respect to the Borrower, including all additions and reductions (cash and non-cash) with respect to Accounts of the Borrower, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion each of which shall be prepared by the Borrower as of the last day of the immediately preceding week or the date 2 days prior to the date of any request;

(iii) At the time of delivery of each of the monthly Financial Statements delivered pursuant to this Section 6.1:

(A) a reconciliation of the most recent Borrowing Base, general ledger and month-end Inventory reports of the Borrower to the Borrower's general ledger and monthly Financial Statements delivered pursuant to this Section 6.1, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion;

(B) to the extent available, a reconciliation of the perpetual inventory by location to the Borrower's most recent Borrowing Base Certificate, general ledger and monthly Financial Statements delivered pursuant to this Section 6.1, in each case accompanied by such supporting detail and documentation as shall be requested by the Administrative Agent in its reasonable discretion;

(C) a reconciliation of the outstanding Loans as set forth in the monthly Financial Statements delivered pursuant to this Section 6.1, accompanied by such

supporting detail and documentation as shall be requested by Administrative Agent in its reasonable discretion; and

(D) a certification that (1) Borrower has not sold, granted a Lien with respect to or advanced against, any Chattel Paper (other than under and pursuant to the Loan Documents) and (2) no Chattel Paper is in the possession of third parties;

(k) At the time of delivery of each of the annual Financial Statements delivered pursuant to Section 6.1, (i) a listing of government contracts of the Borrower subject to the Federal Assignment of Claims Act of 1940; and (ii) a list of any applications for the registration of any Patent, Trademark or Copyright filed by the Borrower with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in the prior Fiscal Quarter.

(l) Appraisals; Inspections.

(i) The Borrower, at its own expense, shall, promptly upon the reasonable request by the Administrative Agent, deliver to the Administrative Agent the results of each physical verification, if any, that the Borrower or any of its Subsidiaries may in their discretion have made, or caused any other Person to have made on their behalf, of all or any portion of their Inventory (and the Borrower shall, upon the reasonable request of the Administrative Agent, conduct, and deliver the results of, such physical verifications as the Administrative Agent may reasonably require); and

(ii) The Borrower, at its own expense, shall, promptly upon the reasonable request of the Administrative Agent, cause to be delivered to the Administrative Agent appraisals, performed by Rouse Asset Services or another independent appraiser reasonably acceptable to the Administrative Agent, of the Net Orderly Liquidation Value of its Inventory at such times as the Administrative Agent shall reasonably require; and

(iii) The Borrower, at its own expense, shall permit the Administrative Agent or a Person designated by the Administrative Agent to conduct such collateral audits at such times as the Administrative Agent shall reasonably require.

(m) Bank Account Balances. To Administrative Agent, within five (5) Business Days after the end of each month, Borrower shall deliver a report in form and substance reasonably satisfactory to Administrative Agent with respect to the bank account balances of Borrower.

Section 6.2 Other Events. The Borrower shall give the Administrative Agent notice of each of the following (which may be made by telephone if promptly confirmed in writing) promptly after any Responsible Officer of any Group Member has knowledge thereof: (a)(i) any Default and (ii) any event that would reasonably be expected to have a Material Adverse Effect, specifying, in each case, the nature and anticipated effect thereof and any action proposed to be taken in connection therewith, (b) any event (other than any event involving loss or damage to property) reasonably expected to result in a mandatory payment of the Obligations pursuant to Section 2.8, stating the material terms and conditions of such transaction and estimating the Net Cash Proceeds thereof, (c) the commencement of, or any material developments in, any action, investigation, suit, proceeding, audit, claim, demand, order or dispute with, by or before any Governmental Authority affecting any Group Member or any property of any Group Member that (i) seeks injunctive or similar relief, (ii) in the reasonable judgment of the Borrower, exposes any Group Member to liability in an aggregate amount in excess of \$5,000,000 or (iii) if adversely determined would reasonably be expected to have a Material Adverse Effect and (d) the acquisition of any material real property or the entering into any material lease.

Section 6.3 Copies of Notices and Reports. The Borrower shall, promptly upon their becoming available, deliver to the Administrative Agent copies of each of the following: (a) all reports that the Borrower transmits to its security holders generally, (b) all documents that any Group Member files with the Securities and Exchange Commission, the National Association of Securities Dealers, Inc., any securities exchange or any Governmental Authority exercising similar functions, (c) all press releases not made available directly to the general public and (d) any material document transmitted or received pursuant to, or in connection with, any Contractual Obligation governing Indebtedness of any Group Member in excess of \$25,000,000.

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

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

Section 6.6 ERISA Matters. The Borrower shall give the Administrative Agent (a) on or prior to any filing by any ERISA Affiliate of any notice of intent to terminate any Title IV Plan, which termination could be reasonably likely to require any Group Member to make any payment in respect thereof, a copy of such notice and (b) promptly, and in any event within 10 days, after any Responsible Officer of any ERISA Affiliate knows or has reason to know that a request for a minimum funding waiver under Section 412 of the Code has been filed with respect to any Title IV Plan or Multiemployer Plan, which, in either case, could be reasonably likely to require any Group Member to make any payment in respect thereof, a notice (which may be made by telephone if promptly confirmed in writing) describing such waiver request and any action that any ERISA Affiliate proposes to take with respect thereto, together with a copy of any notice filed with the PBGC or the IRS pertaining thereto.

Section 6.7 Environmental Matters. (a) The Borrower shall provide the Administrative Agent notice of each of the following (which may be made by telephone if promptly confirmed by the Administrative Agent in writing) promptly after any Responsible Officer of any Group Member knows (and, upon reasonable request of the Administrative Agent, documents and information in connection therewith): (i)(A) unpermitted Releases, (B) the receipt by any Group Member of any notice of violation of or potential liability or similar notice under, or the existence of any condition that could reasonably be expected to result in violations of or liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, written demand, dispute alleging a violation of or liability under any Environmental Law, that, for each of clauses (A), (B) and (C) above (and, in the case of clause (C), if adversely determined), in the aggregate for each such clause, could reasonably be expected to result in Environmental Liabilities in excess of

\$500,000, (ii) the receipt by any Group Member of notification that any property of any Group Member is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities and (iii) any proposed acquisition or lease of real property if such acquisition or lease would have a reasonable likelihood of resulting in aggregate Environmental Liabilities in excess of \$500,000.

(b) Upon reasonable request of the Administrative Agent, the Borrower shall provide the Administrative Agent a report containing an update as to the status of any environmental, health or safety compliance, hazard or liability issue identified in any document delivered to any Secured Party pursuant to any Loan Document or as to any condition reasonably believed by the Administrative Agent to result in material Environmental Liabilities.

Section 6.8 Additional Deliveries.

(a) Contemporaneously with any such filing or distribution, the Borrower will deliver to the Administrative Agent all pleadings, motions, applications, judicial information, financial information and other documents filed or distributed by or on behalf of the Borrower or its Subsidiaries with the Bankruptcy Court, the United States Trustee in the Chapter 11 Case or any official committee appointed in the Chapter 11 Case.

(b) No later than 30 days after each month, the Borrower will deliver to the Administrative Agent a report detailing for the prior month (i) professional fees and expenses that have been invoiced but unpaid to date in the Chapter 11 Case, (ii) the accumulated "hold-back" of professional fees and expenses to date and (iii) the total professional fees paid in the Chapter 11 Case during such month and to date.

(c) The Borrower shall deliver to the Administrative Agent, weekly, for each 13 week period during the Chapter 11 Case, beginning with the Petition Date, a Budget for such 13 week period, which Budget for the period beginning on the Petition Date shall be delivered on the Closing Date and for any period beginning after the Petition Date shall be delivered at least one week prior to the end of the 13th week covered by the then existing Budget, and in addition, by 5:00 PM, New York time on Monday of each week, (x) an update of such Budget (whereby the first week shall be deleted and updated with the week immediately succeeding the last week included in the previous report) (which the Borrower acknowledges shall provide additional detail acceptable to the Administrative Agent with respect to projections delivered after the date of entry of the Final Order), (y) a detailed reconciliation analysis of actual results compared to projected results for the prior week and compared to such Budget; and (z) a written explanation of all material variances (in substantially the same form and detail as delivered pursuant to the Pre-Petition Credit Agreement).

(d) Concurrently with delivering or giving any financial statement, certificate, report, notice or writing, or providing other information, under the foregoing provisions of Section 6, Borrower will deliver a copy of such financial statement, certificate, report, notice or writing or provide such other information to the Lenders.

(e) From time to time, at the request of the Administrative Agent or any Lender, Borrower shall deliver to the Administrative Agent and the Lenders lists of all financial advisors retained by Borrower and descriptions of the compensation arrangements made with such financial advisors, and shall provide to the Administrative Agent and the Lenders access to such advisors and such other information as the Administrative Agent or any Lender may request with respect to work being performed by such advisors on behalf of the Borrower.

(f) Borrower shall deliver to the Administrative Agent and the Lenders all term sheets, engagement letters, letters of intent, agreements in principle and definitive agreements and, to the extent requested by the Administrative Agent or any Lender, other material documents, in each case received by Borrower relating to any third party interest in purchasing Borrower and Borrower agrees to use commercially reasonable efforts not to enter into any such agreement that is subject to confidentiality provisions that prohibit disclosure thereof to the Administrative Agent and the Lenders.

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

Section 6.9 Conference Calls. On a weekly basis, at such time as the Administrative Agent may determine, a conference call among the Administrative Agent, its advisors, officers of the Borrower and its advisors providing information in detail satisfactory to the Administrative Agent on the Borrower's progress in pursuing strategic alternatives including, but not limited to, the sale of all or substantially all of the assets of the Borrower.

ARTICLE 7 AFFIRMATIVE COVENANTS

The Borrower agrees with the Lenders, the L/C Issuers and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

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

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

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

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

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

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

Section 7.7 Access to Books and Records. Each Group Member shall permit the Administrative Agent, the Lenders and any Related Person of any of them and any financial advisor to the Lenders or legal counsel to the Administrative Agent or to the Lenders (other than the Administrative Agent), as often as reasonably requested, at any reasonable time during normal business hours to (a) visit and inspect the property of each Group Member and examine and make copies of and abstracts from, the corporate (and similar), financial, operating and other books and records of each Group Member, (b) discuss the affairs, finances and accounts of each Group Member with any officer or director of any Group Member and (c) communicate directly with any registered certified public accountants (including the Group Members' Accountants); provided that if such visit or inspection occurs at any time when no Default has occurred and is continuing, such visit or inspection shall be coordinated through the Administrative Agent. Each Group Member shall authorize its respective registered certified public accountants (including the Group Members' Accountants) to communicate directly with the Administrative Agent, the Lenders and their Related Persons and with any financial advisor to the Lenders or legal counsel to the Administrative Agent or the Lenders, and to disclose to the Administrative Agent, the Lenders and their Related Persons and any financial advisor to the Lenders or legal counsel to the Administrative Agent or the Lenders all financial statements and other documents and information as they might have and the Administrative Agent or any Lender reasonably requests with respect to any Group Member.

Section 7.8 Environmental. Each Group Member shall comply with, and maintain its real property, whether owned, leased, subleased or otherwise operated or occupied, in compliance with, all applicable Environmental Laws (including by implementing any Remedial Action necessary to achieve such compliance or that is required by orders and directives of any Governmental Authority) except for failures to comply that would not, in the aggregate, have a Material Adverse Effect. Without limiting the foregoing, if an Event of Default is continuing or if the Administrative Agent at any time has a reasonable basis to believe that there exist violations of Environmental Laws by any Group Member or that there exist any Environmental Liabilities, in each case, that would have, in the aggregate, a Material Adverse Effect, then each Group Member shall, promptly upon receipt of request from the Administrative Agent, cause the performance of, and allow the Administrative Agent and its Related Persons access to such real property for the purpose of conducting, such environmental audits and assessments, including subsurface sampling of soil and groundwater, and cause the preparation of such reports, in each case as the Administrative Agent may from time to time reasonably request. Such audits, assessments and reports, to the extent not conducted by the Administrative Agent or any of its Related Persons, shall be conducted and prepared by reputable environmental consulting firms reasonably acceptable to the

Administrative Agent and shall be in form and substance reasonably acceptable to the Administrative Agent.

Section 7.9 Use of Proceeds. (i) On the Closing Date, to the extent provided in the Interim Order the Borrower shall borrow the Initial Loan in order to pay, and shall concurrently apply the proceeds of such Initial Loan on the date of entry of the Interim Order, to pay in full, the outstanding balance of the Prior Lender Obligations constituting Obligations (other than L/C Obligations) in each case, as defined in the Pre-Petition Credit Agreement. (ii) Borrower may also use the proceeds of the Incremental Revolving Loans and Swing Loans (x) to make adequate protection payments under the First Day Orders and the Interim Order (y) for working capital and general corporate purposes in the ordinary course of business (other than (1) critical vendor payments in an aggregate amount that exceed the amount reflected therefor in the First Day Orders addressing critical vendor payments, (2) retention, incentive and severance payments to employees in amounts that exceed the amount approved by the Administrative Agent, whose approval shall not be unreasonably withheld and (3) fees and expenses of professional persons and other payments, except, in the case of (1), (2) and (3), those made pursuant to First Day Orders) in each case, to the extent set forth in the Budget (in each iteration thereof), so long as the Budget (in each such iteration) is acceptable to Administrative Agent. (iii) Borrower may also use the proceeds of the Incremental Revolving Loans and Swing Loans to pay amounts owing to Administrative Agent, L/C Issuers and Lenders, and (iv) Borrower may also use the proceeds of the Incremental Revolving Loans and Swing Loans prior to the Carve-Out Trigger Date, to pay fees and expenses of professionals retained by Borrower or the Committee on an interim basis, to the extent set forth in the Budget and subject to such carve-outs and other agreements as may be agreed to by Administrative Agent, to the extent such professional fees and expenses are approved by order of the Bankruptcy Court entered in the Chapter 11 Case, the form of any interim compensation procedures order submitted to the Bankruptcy Court and that, in any event, each such order shall preserve Administrative Agent's right to review and object to any monthly, interim or final request for the payment of fees or reimbursement of expenses submitted to the Bankruptcy Court).

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

(a) deliver to the Administrative Agent a pledge agreement in form and substance satisfactory to the Administrative Agent pledging 100% of the voting stock of Dayton Superior Canada Ltd. or, to the extent that pledging more than 65% of such voting stock would cause an adverse tax consequence to the Borrower as reasonably demonstrated by the Borrower to the Administrative Agent, 65% of such voting stock;

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

(c) upon request of the Administrative Agent, deliver to the Administrative Agent a Mortgage on any real property owned by the Borrower the fair market value of which exceeds \$1,000,000 and the proceeds of any real property leases by the Borrower on the date of determination, together with all Mortgage Supporting Documents relating to such owned real property (or, if such real property is located in a jurisdiction outside the United States, similar documents deemed reasonably necessary by the Administrative Agent to obtain the equivalent in such jurisdiction of a first-priority mortgage on such real property);

(d) to take all other actions reasonably necessary to ensure the validity or continuing validity of any guaranty for any Obligation or any Lien securing any Obligation, to perfect, maintain, evidence or enforce any Lien securing any Obligation or to ensure such Liens have the same priority as that of the Liens on similar Collateral set forth in the Loan Documents executed on the Closing Date (or, for Collateral located outside the United States, a similar priority reasonably acceptable to the Administrative Agent), including the filing of UCC financing statements in such jurisdictions as may be required by the Loan Documents or applicable Requirements of Law or as the Administrative Agent may otherwise reasonably request and to become a party to the Pre-Petition Intercreditor Agreement as an "Obligor" pursuant to documents in form and substance reasonably acceptable to the Administrative Agent; and

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

Section 7.11 Deposit Accounts; Securities Accounts and Cash Collateral Accounts.

(a) The Borrower shall (i) deposit all of its cash (other than (x) cash in respect of any Excluded Account and (y) cash that is the direct proceeds of the Sale of any Term Loan Priority Collateral in which there is an Existing Lien in favor of the "Administrative Agent" and "Collateral Agent" under (and as such terms are defined in) the Pre-Petition Term Loan Credit Agreement as security for "Obligations" as defined therein as of the Petition Date ("Term Loan Priority Proceeds") into deposit accounts that are Controlled Deposit Accounts, and (ii) deposit all of its Cash Equivalents (other than Term Loan Priority Proceeds) into securities accounts that are Controlled Securities Accounts.

(b) The Administrative Agent shall not have any responsibility for, or bear any risk of loss of, any investment or income of any funds in any Controlled Deposit Account, Controlled Securities Account or Cash Collateral Account. From time to time after funds are required to be deposited in any Cash Collateral Account pursuant to the terms hereof or any other Loan Document, the Administrative Agent may apply funds then held in such Cash Collateral Account to the payment of Obligations in accordance with Section 2.12. No Group Member and no Person claiming on behalf of or through any Group Member shall have any right to demand payment of any funds held in any Cash Collateral Account at any time prior to the termination of all Commitments and the payment in full of all Obligations and, in the case of L/C Cash Collateral Accounts, the termination, or to the extent acceptable to the L/C Issuers, the issuance of back-to back letters of credit issued by issuers and in form and substance satisfactory in all respects to the applicable L/C Issuers and the Administrative Agent in respect of, and in an aggregate amount equal to 105% of the amount of, the outstanding Letters of Credit.

(c) The Administrative Agent will direct that all cash or securities in any Controlled Deposit Account (other than Borrower's disbursement account into which proceeds of the Loans are deposited and other than Term Loan Priority Proceeds) or Controlled Securities Account (other than Term Loan Priority Proceeds) be transferred on a daily basis to a deposit account maintained by and in the name of the Administrative Agent (which may be the deposit account described in Section 2.13(a)) for application to the Obligations.

Section 7.12 Further Assurances. Before the date that is forty-five days following the Closing Date (or such longer time as may be agreed to by the Administrative Agent in writing), the Borrower shall deliver to the Administrative Agent those items set forth in Parts C and D of the Closing Checklist, the completion of each of which shall not be conditions to any Loan or Issuance until the end of such forty-five day period.

ARTICLE 8
NEGATIVE COVENANTS

The Borrower agrees with the Lenders, the L/C Issuers and the Administrative Agent to perform and observe each of the following covenants until the Satisfaction Date:

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

- (a) the Obligations;
- (b) Pre-Petition Indebtedness of the Borrower as listed and described on Schedule 8.1 hereof;
- (c) Indebtedness incurred after the Petition Date consisting of Capitalized Lease Obligations (other than with respect to a lease entered into as part of a Sale and Leaseback Transaction) and purchase money Indebtedness, in each case incurred by any Group Member to finance the acquisition, repair, improvement or construction of fixed or capital assets of such Group Member; provided, however, that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed \$1,000,000 at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time such acquisition, repair, improvement or construction is made);
- (d) Capitalized Lease Obligations arising under Sale and Leaseback Transactions entered into prior to the Petition Date;
- (e) intercompany loans owing to any Group Member and constituting Permitted Investments of such Group Member;
- (f) [omitted]
- (g) [omitted]
- (h) unsecured Indebtedness of the Borrower owing under the Senior Subordinated Notes pursuant to the Senior Subordinated Notes Indenture; provided, however, that the aggregate outstanding principal amount of all such Indebtedness shall not exceed \$155,000,000 at any time;
- (i) the Indebtedness under the Pre-Petition Term Loan Credit Agreement subject to the limitations imposed by the Pre-Petition Intercreditor Agreement;
- (j) [omitted]
- (k) [omitted]
- (l) Indebtedness of Dayton Superior Canada Ltd. in a principal amount not exceeding \$1,000,000 or its equivalent in Canadian dollars outstanding at any time, provided, that (i) the credit agreement and related documents are in form and substance reasonably satisfactory to the Administrative Agent and (ii) Borrower shall not have any liability with respect to such Indebtedness or shall provide any collateral security or other support with respect thereto;

(m) [omitted]

(n) Indebtedness arising from performance and surety bonds and completion guarantees provided by the Borrower or any Subsidiary of the Borrower in the ordinary course of business not in excess of \$1,000,000 in the aggregate outstanding at any time; and

(o) Indebtedness arising under indemnity agreements to title insurers to cause such title insurers to issue to the Administrative Agent mortgagee title insurance policies.

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

(a) Liens created pursuant to any Loan Document, the Interim Order or the Final Order;

(b) Customary Permitted Liens of Group Members;

(c) Liens existing on the date hereof and set forth on Schedule 8.2 and any extensions or renewals thereof;

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

(e) Liens on property of the Borrower or any of its Subsidiaries securing Indebtedness permitted under Section 8.1(d) provided, however, that (i) such Liens exist prior to the Petition Date and (ii) such Liens do not extend to any property of any Group Member other than the property (and proceeds thereof) acquired or built, or the improvements or repairs, financed by such Indebtedness;

(f) Liens in favor of the "Administrative Agent" and "Collateral Agent" under (and as such terms are defined in) the Pre-Petition Term Loan Credit Agreement and securing the "Obligations," (as such term is defined therein as of the Petition Date); and

(g) subject to the priorities provided in the Interim Order or the Final Order, as applicable, the Prior Lender Replacement Liens and the Lender Expense Replacement Liens.

The prohibition provided for in this Section 8.2 specifically includes, without limitation, any effort by the Borrower, any Committee or any other party-in-interest in the Chapter 11 Case to prime or create pari passu to any claims, Liens or interests of the Administrative Agent and Lenders any Lien (other than the Carve-Out) irrespective of whether such claims, Liens or interests may be "adequately protected". Borrower shall not grant a Lien on any property that does not constitute Collateral to any creditor of the Borrower.

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

- (a) Investments existing on the date hereof and set forth on Schedule 8.3;
- (b) Investments in cash and Cash Equivalents;
- (c) (i) endorsements for collection or deposit in the ordinary course of business consistent with past practice, (ii) extensions of trade credit (other than to Affiliates of the Borrower) arising or acquired in the ordinary course of business and (iii) Investments received in settlements in the ordinary course of business of such extensions of trade credit;
- (d) [omitted]
- (e) Investments by the Borrower or any Group Member in any other Group Member or in any joint venture; provided, however, that the aggregate outstanding amount of all Investments permitted pursuant to this clause (e) shall not exceed the amount set forth therefor in the Budget at any time; and provided, further, that any Investment consisting of loans or advances to the Borrower shall be subordinated in full to the payment of the Obligations of the Borrower on terms and conditions reasonably satisfactory to the Administrative Agent; and
- (f) loans or advances to employees of the Borrower or any of its Subsidiaries to finance travel, entertainment and relocation expenses and other ordinary business purposes in the ordinary course of business as presently conducted; provided, however, that the aggregate outstanding principal amount of all loans and advances permitted pursuant to this clause (f) shall not exceed the amount set forth therefor in the Budget.

Section 8.4 Asset Sales. No Group Member shall Sell any of its property (other than cash or Cash Equivalents) or issue shares of its own Stock, except for the following:

- (a) in each case to the extent entered into in the ordinary course of business and made to a Person that is not an Affiliate of the Borrower, (i) Sales of Cash Equivalents, inventory (including items in the rental fleet), (ii) Sales of property that has become obsolete or worn out and (ii) non-exclusive licenses of Intellectual Property;
- (b) [omitted]
- (c) (i) any Sale of any property (other than their own Stock or Stock Equivalents) by any Group Member to any other Group Member to the extent any resulting Investment constitutes a Permitted Investment, (ii) any Restricted Payment by any Group Member permitted pursuant to Section 8.5 and (iii) any distribution by the Borrower of the proceeds of Restricted Payments from any other Group Member to the extent permitted in Section 8.5; and
- (d) (i) any Sale or issuance by the Borrower of its own Stock, (ii) any Sale or issuance by any Subsidiary of the Borrower of its own Stock to any Group Member or any other Person to the extent not prohibited by this Agreement or creating a Default or Event of Default, provided, however, that in the case of this clause (ii), the proportion of such Stock and of each class of such Stock (both on an outstanding and fully-diluted basis) held by the Borrower does not change as a result of such Sale or issuance and (iii) to the extent necessary to satisfy any Requirement of Law in the jurisdiction of incorporation of any Subsidiary of the Borrower, any Sale or issuance by such Subsidiary of its own Stock constituting directors' qualifying shares or nominal holdings.

Section 8.5 Restricted Payments. No Group Member shall directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment except for the following:

(a) (i) Restricted Payments (A) [omitted] and (B) by any Group Member to any other Group Member that is a Credit Party and (ii) dividends and distributions by any Subsidiary of the Borrower to any holder of its Stock, to the extent made to all such holders ratably according to their ownership interests in such Stock; and

(b) Restricted Payments approved by the Administrative Agent pursuant to First Day Orders or otherwise in writing.

Section 8.6 Prepayment of Indebtedness; Pre-Petition Payments. (i) No Group Member shall (x) prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof any Subordinated Debt, (y) set apart any property for such purpose, whether directly or indirectly and whether to a sinking fund, a similar fund or otherwise, or (z) make any payment in violation of any subordination terms of any Indebtedness; provided, however, that each Group Member may, to the extent not otherwise prohibited by the Loan Documents, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof (or set apart any property for such purpose) (A) in the case of any Group Member, any Indebtedness owing by such Group Member to any other Group Member and (B) otherwise, any Indebtedness owing to the Borrower; and (ii) Borrower shall not make any Pre-Petition Payment other than Pre-Petition Payment of the Prior Lender Obligations and Pre-Petition Payments specifically contemplated in the First Day Orders, the Interim Order, the Final Order, the Budget or payments otherwise approved in writing by the Administrative Agent or in connection with the assumption of any contract or lease approved by the Bankruptcy Court and consented to by the Administrative Agent.

Section 8.7 Fundamental Changes. No Group Member shall (a) merge, consolidate or amalgamate with any Person, (b) acquire all or substantially all of the Stock or Stock Equivalents of any Person or (c) acquire all or substantially all of the assets of any Person or all or substantially all of the assets constituting any line of business, division, branch, operating division or other unit operation of any Person.

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

Section 8.9 Transactions with Affiliates. No Group Member shall, except as otherwise expressly permitted herein, enter into any other transaction directly or indirectly with, or for the benefit of, any Affiliate of the Borrower (including Guaranty Obligations with respect to any obligation of any such Affiliate) other than (x) transactions with any such Affiliate that are on terms that are not materially less favorable to such Group Member than those that might reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person not an Affiliate of such Group Member and (y) each of the following:

(a) reasonable fees and compensation paid to, and indemnity provided on behalf of, officers, directors, employees or consultants of the Borrower or any Subsidiary of the Borrower as determined in good faith by the Borrower's Board of Directors or senior management;

(b) transactions exclusively between or among the Borrower and its Subsidiaries; provided such transactions are not otherwise prohibited by this Agreement;

(c) Restricted Payments permitted by this Agreement and Investments permitted by this Agreement;

- (d) [omitted]; and
- (e) payments or loans to employees or consultants that are approved by the Board of Directors of Borrower in good faith.

Section 8.10 Third-Party Restrictions on Indebtedness, Liens, Investments or Restricted Payments. No Group Member shall incur or otherwise suffer to exist or become effective or remain liable on or responsible for any Contractual Obligation limiting the ability of (a) any Subsidiary of the Borrower to make Restricted Payments to, or Investments in, or repay Indebtedness or otherwise Sell property to, any Group Member or (b) any Group Member to incur or suffer to exist any Lien upon any property of any Group Member, whether now owned or hereafter acquired, securing any of its Obligations (including any "equal and ratable" clause and any similar Contractual Obligation requiring, when a Lien is granted on any property, another Lien to be granted on such property or any other property), except, for each of clauses (a) and (b) above, (x) pursuant to the Loan Documents, the Pre-Petition Loan Documents, the Pre-Petition Term Loan Documents (as in effect on the Closing Date) and the Senior Subordinated Notes Indenture (as in effect on the Closing Date), (y) limitations on Liens (other than those securing any Obligation) on any property whose acquisition, repair, improvement or construction is financed by purchase money Indebtedness, Capitalized Lease Obligations in reliance upon Section 8.1(b) or (c) set forth in the Contractual Obligations governing such Indebtedness, Capitalized Lease Obligations or Guaranty Obligations with respect thereto.

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

- (a) waive or otherwise modify any term of any Related Document or any Constituent Document of, or otherwise change the capital structure of, any Group Member (including the terms of any of their outstanding Stock or Stock Equivalents), in each case except for those modifications and waivers that (x) do not elect, or permit the election, to treat the Stock or Stock Equivalents of any limited liability company (or similar entity) as certificated and (y) do not materially and adversely affect the rights and privileges of any Group Member and do not materially and adversely affect the interests of any Secured Party under the Loan Documents or in the Collateral;
- (b) waive or otherwise modify any term of any Subordinated Debt in a manner contrary to any applicable subordination agreement;
- (c) waive or otherwise modify any term of the "Loan Documents" (as such term is defined in the Pre-Petition Term Loan Credit Agreement) in a manner contrary to the Pre-Petition Intercreditor Agreement;
- (d) permit any Indebtedness (other than the Obligations, the "Obligations," (as such term is defined in the Pre-Petition Term Loan Credit Agreement as of the Petition Date) to qualify as "Designated Senior Debt" under the Senior Subordinated Notes Indenture or permit the Obligations to cease qualifying as such or as "Senior Debt" as defined in the Senior Subordinated Notes Indenture; or
- (e) except as approved in writing by the Administrative Agent, assume, reject, cancel, terminate breach or modify (x) any material agreement, contract, instrument or other document to which any Group Member is a party or (y) any other agreement, contract, instrument or other document if such assumption, rejection, cancellation, termination, breach or modification under this clause (y), either individually or in the aggregate, would have a negative effect on the value of the Collateral or a Material Adverse Effect upon Borrower's operations.

Section 8.12 Accounting Changes; Fiscal Year. No Group Member shall change its (a) accounting treatment or reporting practices, except as permitted or required by GAAP or any Requirement of Law, or (b) its Fiscal Year or its method for determining Fiscal Quarters or Fiscal Months; provided that upon thirty (30) days' prior notice to the Administrative Agent the Group Members may change their Fiscal Year, Fiscal Quarter or Fiscal Month (such change to be applicable to all Group Members included in consolidated financial reporting under GAAP); provided, further, that (i) such change does not defer the delivery of audited financial statements required hereunder by more than one Fiscal Quarter and (ii) the Borrower shall deliver such financial information (including reconciliations if required under GAAP) as the Administrative Agent may reasonably request with respect to such change in Fiscal Year.

Section 8.13 Margin Regulations. No Group Member shall use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the Federal Reserve Board) in contravention of Regulation U of the Federal Reserve Board.

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

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

Section 8.16 Bankruptcy Matters. Borrower shall not (i) incur, create, assume, suffer to exist or permit any other Superpriority Claim which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against the Borrower hereunder, except for the Carve-Out; (ii) seek or consent to, any modification, stay, vacation or amendment to (A) any First Day Order having a material adverse effect on the rights of the Lenders under this Agreement or (B) the Interim Order and Final Order; (iii) seek or consent to any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents; or (iv) seek or consent to any plan of reorganization or liquidation unless all of the Obligations are to be paid in full in cash or other immediately available funds and the arrangements provided for herein terminated pursuant thereto prior to or contemporaneously with the effectiveness of such plan.

Section 8.17 Certain Expenses. From and after the Petition Date, the Borrower shall not make cash expenditures for (i) any "key employee incentive expenses", retention payments and severance payments to employees without the prior written approval of the Administrative Agent, which approval shall not be unreasonably withheld, (ii) "utility deposits" in excess of \$416,375 in the aggregate or (iii) "critical vendor payments" in excess of those provided for by the First Day Orders.

ARTICLE 9 EVENTS OF DEFAULT

Section 9.1 Definition. Except for defaults occasioned by the filing of the Chapter 11 Case and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits the Borrower from complying or permits the Borrower not to comply, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) the Borrower shall fail to pay (i) any principal of any Loan or any L/C Reimbursement Obligation when the same becomes due and payable or (ii) any interest on any Loan, any fee under any Loan Document or any other Obligation (other than those set forth in clause (i) above) and, in the case of this clause (ii), such non-payment continues for a period of 1 Business Days after the due date therefor or (iii) on or prior to the close of business on the first Business Day after the entry of the Final Order, the fees required under the Fee Letter; or

(b) any representation, warranty or certification made or deemed made by or on behalf of the Borrower in any Loan Document or by or on behalf of the Borrower (or any Responsible Officer thereof) in connection with any Loan Document (including in any document delivered in connection with any Loan Document) shall prove to have been incorrect in any material respect when made or deemed made; or

(c) the Borrower shall fail to comply with (i) any provision of Section 6.1, 6.8, 7.1 (Maintenance of Corporate Existence), 7.9 (Use of Proceeds), Article V or Article VIII (Negative Covenants) or (ii) any other provision of any Loan Document (other than those specified in clauses (a), (b) and (c)(i) of this Section 9.1) if, in the case of this clause (ii), such failure shall remain unremedied for 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower becomes aware of such failure and (B) the date on which notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; or

(d) (i) any Group Member shall fail to make any payment when due (whether due because of scheduled maturity, required prepayment provisions, acceleration, demand or otherwise), after giving effect to any applicable grace period, on any Post-Petition Indebtedness of any Group Member (other than the Obligations or any Hedging Agreement) and, in each case, such failure relates to Indebtedness having a principal amount of \$2,500,000 or more, (ii) any other event shall occur or condition shall exist under any Post-Petition Contractual Obligation relating to any such Indebtedness (other than the Obligations), if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Post-Petition Indebtedness having an individual principal amount in excess of \$2,500,000 or (iii) any such Post-Petition Indebtedness (other than the Obligations) having an individual principal amount in excess of \$2,500,000 shall become or be declared to be due and payable, or be required to be prepaid, redeemed, defeased or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(e) Omitted; or

(f) one or more judgments, orders or decrees (or other similar process) shall be rendered against any Group Member (i)(A) in the case of money judgments, orders and decrees, involving an aggregate amount (excluding amounts adequately covered by insurance payable to any Group Member, to the extent the relevant insurer has not denied coverage therefor) in excess of \$2,500,000 or (B) otherwise, that would have, in the aggregate, a Material Adverse Effect and (ii)(A) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order or decree or (B) such judgment, order or decree shall not have been vacated or discharged for a period of 30 consecutive

days and there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof; or

(g) except pursuant to a valid, binding and enforceable termination or release permitted under the Loan Documents and executed by the Administrative Agent or as otherwise expressly permitted under any Loan Document, (i) any provision of any Loan Document shall, at any time after the delivery of such Loan Document, fail to be valid and binding on, or enforceable against, the Borrower, (ii) any Loan Document purporting to grant a Lien to secure any Obligation shall, at any time after the delivery of such Loan Document, fail to create a valid and enforceable Lien on any Collateral that constitutes part of the Borrowing Base or any material portion of any other Collateral purported to be covered thereby or such Lien shall fail or cease to be a perfected Lien with the priority required in the relevant Loan Document on any Collateral that constitutes part of the Borrowing Base or any material portion of any other Collateral or (iii) any subordination provision pertaining to Subordinated Debt shall, in whole or in part, terminate or otherwise fail or cease to be valid and binding on, or enforceable against any holder of Subordinated Debt or any trustee or representative thereof, or any Group Member shall state in writing that any of the events described in clause (i), (ii) or (iii) above shall have occurred; or

(h) any information contained in any Borrowing Base Certificate is untrue or incorrect in any respect (other than inadvertent, immaterial errors not exceeding \$250,000 in the aggregate in any Borrowing Base Certificate), or any representation or warranty herein or in any Loan Document or in any written statement, report, financial statement or certificate (other than a Borrowing Base Certificate) made or delivered to the Administrative Agent or any Lender by the Borrower is untrue or incorrect in any material respect (without duplication of materiality qualifiers contained therein) as of the date when made or deemed made; or

(i) there shall occur any Change of Control; or

(j) the Borrower shall extend the expiration date of the Exchange Offer and Consent Solicitation Relating to Debt Securities Issued by Dayton Superior Corporation, issued by the Borrower on July 15, 2008 (the "Exchange Offer") to a date beyond April 9, 2009 or shall accept any of the Senior Subordinated Notes pursuant to the Exchange Offer; or

(k) at any time after the 10th day from the Petition Date, the Borrower shall fail to continue to engage (i) a consultant acceptable to Administrative Agent (it being understood that Alix Partners, Alvarez & Marsal or Mesirow Financial Consulting, LLC is acceptable to Administrative Agent) to provide operational advice, perform cash flow modeling and otherwise provide advisory services pursuant to such terms of engagement (including such other duties and responsibilities) as are acceptable to Administrative Agent and (ii) an investment banker acceptable to Administrative Agent (it being understood that Moelis and Company LLC and/or their Affiliates are acceptable to Administrative Agent) on terms and conditions and with respect to duties and responsibilities acceptable to Administrative Agent; or

(l) the occurrence of any of the following in the Chapter 11 Case:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by the Borrower in the Chapter 11 Case, or the entry of an order (a) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code from any entity other than the Lenders not otherwise permitted by this Agreement, (b) to authorize any Person to recover from any portions of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or (c) except as provided in the Final Order or the Interim Order, to use cash collateral

without the Required Lenders' prior written consent under Section 363(c) of the Bankruptcy Code or (d) to grant any Lien other than Permitted Liens upon or affecting any Collateral;

(ii) without the prior written consent of the Required Lenders, the dismissal of the Chapter 11 Case or the conversion of the Chapter 11 case to a case under chapter 7 of the Bankruptcy Code;

(iii) the entry of an order which has not been withdrawn, dismissed or reversed (a) appointing an interim or permanent trustee in the Chapter 11 Case or the appointment of an examiner with expanded powers in the Chapter 11 Case, (b) granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral or on any other property or assets of Borrower, in either case in excess of \$100,000 or (y) with respect to any Lien of, or the granting of any Lien on any Collateral or any other property or assets of Borrower to, any state or local environmental or regulatory agency or authority, in each case with a value in excess of \$100,000, (c) amending, supplementing, staying, reversing, vacating or otherwise modifying any of the Interim Order, the Final Order, any order providing for adequate protection Liens on the Collateral in favor of the Prior Lenders, this Agreement or any other Loan Document, or Administrative Agent's, any Lender's, Prior Administrative Agent's or Prior Lenders' rights, benefits, privileges or remedies under the Interim Order, the Final Order, this Agreement, any other Loan Document or any Pre-Petition Loan Document or (d) approving a sale pursuant to section 363 of the Bankruptcy Code or approving bidding procedures therefore, other than any such order (under this clause (d)) that is satisfactory to the Administrative Agent in its sole discretion;

(iv) the occurrence of any Termination Event;

(v) Borrower, without the prior written consent of the Required Lenders, filing a plan of reorganization for Borrower or any modification thereto that does not provide for the repayment in full in cash of the Obligations and the termination of the Commitments in accordance with the terms thereof on the effective date of the plan or the entry by the Bankruptcy Court of an order confirming any such plan, or the filing a motion to withdraw any plan of reorganization filed by Borrower the filing of which caused a Termination Event not to occur;

(vi) the termination or modification of Borrower's exclusivity as to the proposal of any reorganization plan;

(vii) Borrower consolidating or combining with any other Person except pursuant to a confirmed plan of reorganization with the prior written consent of Required Lenders;

(viii) the challenge by the Borrower (or the support by Borrower of the challenge by any other Person) to the Administrative Agent's, any Lender's, the Prior Administrative Agent's, or any Prior Lenders' motion seeking confirmation of amount of such Administrative Agent's, Lenders', Prior Administrative Agent's or Prior Lenders' claim or the validity, extent, perfection, priority or characterization of any obligations incurred or Liens granted under or in connection with the Pre-Petition Credit Agreement;

(ix) the challenge by Borrower (or the support by Borrower of the challenge by any other Person) to (a) disallow in whole or in part the claim of the Prior Administrative Agent or the Prior Lenders under the Pre-Petition Credit Agreement or the claim of the Administrative Agent or any Lender in respect of Obligations or to challenge the validity,

perfection and enforceability of any of the Liens in favor of any of them, or (b) equitably subordinate or re-characterize in whole or in part the claim of the Administrative Agent or any Lender in respect of the Obligations or the Prior Agent or Pre-Petition Lender in respect of the Pre-Petition Indebtedness, or in each case the entry of an order by the Bankruptcy Court granting the relief described above;

(x) the filing of a lawsuit, adversary proceeding, claim or counterclaim related to Borrower or Collateral or pre-petition collateral against the Administrative Agent, any Lender, Prior Administrative Agent, or any Prior Lender by Borrower;

(xi) the application by Borrower for authority to make any Pre-Petition Payment without the Administrative Agent's prior written consent, other than pursuant to the First Day Orders;

(xii) without the Administrative Agent's prior written consent, the sale of assets of the Borrower either through a sale pursuant to section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Case or otherwise, unless the Obligations are paid in full in cash and the Commitments hereunder are terminated upon consummation of such sale;

(xiii) the entry of an order in the Chapter 11 Case avoiding or requiring repayment of any portion of the Pre-Petition Loans;

(xiv) subject to any applicable cure periods contained in such Order, the failure of Borrower to perform its obligations under the Interim Order or the Final Order or the failure of Borrower to provide, or any unenforceability or other failure of (whether resulting from a reversal, stay, vacation or modification of any such order or otherwise), any adequate protection provided to the Prior Administrative Agent or Prior Lenders under the Pre-Petition Credit Agreement in the First Day Orders or Interim Order or as otherwise ordered by the Bankruptcy Court;

(xv) the use, remittance or the application of proceeds of Collateral in contravention of the terms of the Loan Documents or the Orders or First Day Orders;

(xvi) the entry of an order in the Chapter 11 Case authorizing procedures for interim compensation of professionals that is not in form and substance acceptable to the Administrative Agent;

(xvii) without the prior written consent of the Administrative Agent, Borrower incurs, creates, assumes, suffers to exist or permits any superpriority claim in the Chapter 11 Case that is pari passu with or senior to the claims of the Lenders and Administrative Agent, other than the Carve-Out;

(xviii) the marshaling of any Collateral;

(xix) Borrower requesting or seeking authority for or that approves or provides authority to take any other action or actions adverse to the Administrative Agent or any Lender or its rights and remedies under the Loan Documents or its interest in the Collateral; or

(xx) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by the Borrower to which the Administrative Agent does not consent or otherwise agree to the treatment of its claims.

Section 9.2 Remedies.

(a) Termination of Commitments. Upon the occurrence of any Default or Event of Default, Administrative Agent may, and at the request of Required Lenders Administrative Agent shall, notwithstanding the provisions of section 362 of the Bankruptcy Code, and subject to and in accordance with the terms of the Interim Order or Final Order, as applicable, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, without notice or demand, immediately suspend or terminate all or any portion of Lenders' obligations to make additional Incremental Revolving Loans or Issue or cause to be Issued Letters of Credit under the Incremental Revolving Loan Commitments; provided that, in the case of a Default, if the subject condition or event is waived by Required Lenders or cured within any applicable grace or cure period, the Incremental Revolving Loan Commitments shall be reinstated.

(b) Acceleration and other Remedies. If any Event of Default has occurred and is continuing, Administrative Agent may (and at the written request of the Required Lenders shall), notwithstanding the provision of section 362 of the Bankruptcy Code subject to and in accordance with the terms of the Interim Order or the Final Order, as applicable, (i) terminate the Incremental Revolving Loan Commitments with respect to further Incremental Revolving Loans or the incurrence of further L/C Obligations; (ii) reduce the Incremental Revolving Loan Commitments from time to time; (iii) declare all or any portion of the Obligations, including all or any portion of any Loan to be forthwith due and payable, and require that the L/C Obligations be cash collateralized in the manner set forth in Section 9.3 in accordance with the terms of the Interim Order or the Final Order; (iv) terminate the consent by the Lenders to the use of cash collateral by the Loan Parties or (v) exercise any rights and remedies provided to Administrative Agent under the Loan Documents, the Interim Order or the Final Order or at law or equity.

Section 9.3 Actions in Respect of Letters of Credit. At any time (i) upon the Termination Date, (ii) after the Termination Date when the aggregate funds on deposit in L/C Cash Collateral Accounts shall be less than 105% of the L/C Obligations for all Letters of Credit at such time and (iii) as required by Section 2.12, the Borrower shall pay to the Administrative Agent in immediately available funds at the Administrative Agent's office referred to in Section 11.11, for deposit in a L/C Cash Collateral Account, the amount required so that, after such payment, the aggregate funds on deposit in the L/C Cash Collateral Accounts equals or exceeds 105% of the L/C Obligations for all Letters of Credit at such time (not to exceed, in the case of clause (iii) above, the payment to be applied pursuant to Section 2.12 to provide cash collateral for Letters of Credit).

ARTICLE 10 THE ADMINISTRATIVE AGENT

Section 10.1 Appointment and Duties. (a) Appointment of Administrative Agent. Each Lender and each L/C Issuer hereby appoints GE Capital (together with any successor Administrative Agent pursuant to Section 10.9) as the Administrative Agent hereunder and authorizes the Administrative Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from any Group Member, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to the Administrative Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

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

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

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

Section 10.3 Use of Discretion. (a) No Action without Instructions. The Administrative Agent shall not be required to exercise any discretion or take, or to omit to take, any action, including with respect to enforcement or collection, except any action it is required to take or omit

to take (i) under any Loan Document or (ii) pursuant to instructions from the Required Lenders (or, where expressly required by the terms of this Agreement, a greater proportion of the Lenders).

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

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

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

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

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

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

(iii) makes no warranty or representation, and shall not be responsible, to any Secured Party for any statement, document, information, representation or warranty made or furnished by or on behalf of any Related Person or the Borrower in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to the Borrower, whether or not transmitted or (except for documents expressly required

under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by the Administrative Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by the Administrative Agent in connection with the Loan Documents; and

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

and, for each of the items set forth in clauses (i) through (iv) above, each Lender, L/C Issuer, the Borrower hereby waives and agrees not to assert any right, claim or cause of action it might have against the Administrative Agent based thereon.

Section 10.6 Administrative Agent Individually. The Administrative Agent and its Affiliates may make loans and other extensions of credit to, acquire Stock and Stock Equivalents of, engage in any kind of business with, the Borrower or Affiliate thereof as though it were not acting as Administrative Agent and may receive separate fees and other payments therefor. To the extent the Administrative Agent or any of its Affiliates makes any Loan or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Required Lender", and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, the Administrative Agent or such Affiliate, as the case may be, in its individual capacity as Lender or as one of the Required Lenders, respectively.

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

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

restructuring or other legal or other proceeding or otherwise) of, or legal advice in respect of its rights or responsibilities under, any Loan Document.

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

Section 10.9 Resignation of Administrative Agent or L/C Issuer. (a) The Administrative Agent may resign at any time by delivering notice of such resignation to the Lenders and the Borrower, effective on the date set forth in such notice or, if not such date is set forth therein, upon the date such notice shall be effective. If the Administrative Agent delivers any such notice, the Required Lenders shall have the right to appoint a successor Administrative Agent. If, within 30 days after the retiring Administrative Agent having given notice of resignation, no successor Administrative Agent has been appointed by the Required Lenders that has accepted such appointment, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent from among the Lenders. Each appointment under this clause (a) shall be subject to the prior consent of the Borrower, which may not be unreasonably withheld but shall not be required during the continuance of a Default.

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

(c) Any L/C Issuer may resign at any time by delivering notice of such resignation to the Administrative Agent, effective on the date set forth in such notice or, if no such date is set forth therein, on the date such notice shall be effective. Upon such resignation, the L/C Issuer shall remain an L/C Issuer and shall retain its rights and obligations in its capacity as such (other than any obligation to Issue Letters of Credit but including the right to receive fees or to have Lenders participate in any L/C Reimbursement Obligation thereof) with respect to Letters of Credit issued by such L/C Issuer prior to the date of such resignation and shall otherwise be discharged from all other duties and obligations under the Loan Documents.

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

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

(b) any Lien held by the Administrative Agent for the benefit of the Secured Parties against (i) any Collateral that is Sold by Borrower in a Sale permitted by the Loan Documents (including pursuant to a valid waiver or consent), to the extent all Liens required to be granted in such Collateral pursuant to Section 7.10 after giving effect to such Sale have been granted, (ii) any property subject to a Lien permitted hereunder in reliance upon Section 8.2(d) or (e) and (iii) all of the Collateral and the Borrower, upon (A) termination of the Commitments, (B) payment and satisfaction in full of all Loans, all L/C Reimbursement Obligations and all other Obligations (other than contingent indemnification Obligations not relating to Letters of Credit and as to which no underlying claim has arisen or been asserted) that the Administrative Agent has been notified in writing are then due and payable by the holder of such Obligation, and (C) deposit of cash collateral with respect to all contingent Obligations (or, in the case of any L/C Obligation, deposit of funds in the applicable L/C Cash Collateral Account equal to at least 105% of such L/C Obligation, or to the extent acceptable to the L/C Issuers, the issuance of back-to-back letters of credit issued by issuers and in form and substance reasonably satisfactory in all respects to the applicable L/C Issuer and the Administrative Agent and in an amount equal to 105% of each outstanding Letter of Credit), in amounts and on terms and conditions and with parties reasonably satisfactory to the Administrative Agent.

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

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

herein, such Secured Party shall not have any right to be notified of, consent to, direct, require or be heard with respect to, any action taken or omitted in respect of the Collateral or under any Loan Document.

ARTICLE 11 MISCELLANEOUS

Section 11.1 Amendments, Waivers, Etc. (a) No amendment or waiver of any provision of any Loan Document (other than the Fee Letter, the Control Agreements, the L/C Reimbursement Agreements and the Secured Hedging Agreements) and no consent to any departure by the Borrower therefrom shall be effective unless the same shall be in writing and signed (1) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Secured Parties or extending an existing Lien over additional property, by the Administrative Agent and the Borrower, (2) in the case of any other waiver or consent, by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and (3) in the case of any other amendment, by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower; provided, however, that no amendment, consent or waiver described in clause (2) or (3) above shall, unless in writing and signed by each Lender directly affected thereby (or by the Administrative Agent with the consent of such Lender), in addition to any other Person the signature of which is otherwise required pursuant to any Loan Document, do any of the following:

(i) waive any condition specified in Section 3.1, except any condition referring to any other provision of any Loan Document;

(ii) increase the Commitment of such Lender or subject such Lender to any additional obligation; provided, that increases in the aggregate amount of the Commitments shall only require the consent of the Required Lenders and each Lender providing such increase in the Commitments;

(iii) reduce (including through release, forgiveness, assignment or otherwise) (A) the principal amount of, the interest rate on, or any obligation of the Borrower to repay (whether or not on a fixed date), any outstanding Loan owing to such Lender, (B) any fee or accrued interest payable to such Lender or (C) any L/C Reimbursement Obligation or any obligation of the Borrower to repay (whether or not on a fixed date) any L/C Reimbursement Obligation; provided, however, that this clause (iii) does not apply to any change to any provision increasing any interest rate or fee during the continuance of an Event of Default or to any payment of any such increase;

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

(v) except as provided in Section 10.10, release all or substantially all of the Collateral of the Borrower;

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

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

and provided, further, that (x) no amendment, waiver or consent shall affect the rights or duties under any Loan Document of, or any payment to, the Administrative Agent (or otherwise modify any provision of Article X or the application thereof), the Swingline Lender, any L/C Issuer or any SPV that has been granted an option pursuant to Section 11.2(f) unless in writing and signed by the Administrative Agent, the Swingline Lender, such L/C Issuer or, as the case may be, such SPV in addition to any signature otherwise required, (y) the consent of the Borrower shall not be required to change any order of priority set forth in Section 2.12 and (z) no amendment of the definition of "Permitted Overadvance Amount" shall be effective unless signed by the Supermajority Lenders. No amendment, modification or waiver of this Agreement or any Loan Document altering the ratable treatment of Obligations arising under Secured Hedging Agreement resulting in such Obligations being junior in right of payment to principal of the Loans or resulting in Obligations owing to any Secured Hedging Counterparty being unsecured (other than releases of Liens in accordance with the terms hereof), in each case in a manner adverse to any Secured Hedging Counterparty, shall be effective without the written consent of such Secured Hedging Counterparty or, in the case of a Secured Hedging Agreement provided or arranged by the Administrative Agent or an Affiliate thereof, the Administrative Agent.

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

Section 11.2 Assignments and Participations; Binding Effect. (a) Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and when the Administrative Agent shall have been notified by each Lender and L/C Issuer that such Lender or L/C Issuer has executed it. Thereafter, it shall be binding upon and inure to the benefit of, but only to the benefit of, the Borrower (in each case except for Article X), the Administrative Agent, each Lender and L/C Issuer and, to the extent provided in Section 10.11, each other Indemnitee and Secured Party and, in each case, their respective successors and permitted assigns. Except as expressly provided in any Loan Document (including in Section 10.9), none of the Borrower, any L/C Issuer or the Administrative Agent shall have the right to assign any rights or obligations hereunder or any interest herein.

(b) Right to Assign. Each Lender may sell, transfer, negotiate or assign all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Loans and Letters of Credit) to (i) any existing Lender, (ii) any Affiliate or Approved Fund of any existing Lender or (iii) any other Person acceptable (which acceptance shall not be unreasonably withheld or delayed) to the Administrative Agent and, as long as no Event of Default is continuing, the Borrower; provided, however, that (x) such Sales must be ratable among the obligations owing to and owed by such Lender with respect to the Revolving Credit Facility and (y) the aggregate outstanding principal amount (determined as of the effective date of the applicable Assignment) of the Loans, Commitments and L/C Obligations subject to any such Sale shall be in a minimum amount of \$5,000,000, unless such Sale is made to an existing Lender or an Affiliate or Approved Fund of any existing Lender, is of the assignor's (together with its Affiliates and Approved Funds) entire interest in the Revolving Credit Facility or is made with the prior consent of the Borrower and the Administrative Agent.

(c) Procedure. The parties to each Sale made in reliance on clause (b) above (other than those described in clause (e) or (f) below) shall execute and deliver to the Administrative Agent an Assignment via an electronic settlement system designated by the Administrative Agent (or if previously agreed with the Administrative Agent, via a manual execution and delivery of the assignment) evidencing such Sale, together with any existing Note subject to such Sale (or any affidavit of loss therefor acceptable to the Administrative Agent), any tax forms required to be delivered pursuant to Section 2.17(f) and payment of an assignment fee in the amount of \$3,500, provided that (1) if a Sale by a Lender is made to an Affiliate or an Approved Fund of such assigning Lender, then no assignment fee shall be due in connection with such Sale, and (2) if a Sale by a Lender is made to an assignee that is not an Affiliate or Approved Fund of such assignor Lender, and concurrently to one or more Affiliates or Approved Funds of such assignee, then only one assignment fee of \$3,500 shall be due in connection with such Sale. Upon receipt of all the foregoing, and conditioned upon such receipt and, if such assignment is made in accordance with Section 11.2(b)(iii), upon the Administrative Agent (and the Borrower, if applicable) consenting to such Assignment, from and after the effective date specified in such Assignment, the Administrative Agent shall record or cause to be recorded in the Register the information contained in such Assignment.

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

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

(f) Participants and SPVs. In addition to the other rights provided in this Section 11.2, each Lender may, (x) with notice to the Administrative Agent, grant to an SPV the option to make all or any part of any Loan that such Lender would otherwise be required to make hereunder (and the exercise of such option by such SPV and the making of Loans pursuant thereto shall satisfy the obligation of such Lender to make such Loans hereunder) and such SPV may assign to such Lender the right to receive payment with respect to any Obligation and (y) without notice to or consent from the Administrative Agent or the Borrower, sell participations to one or more Persons in or to all or a portion of its rights and obligations under the Loan Documents (including all its rights and obligations with respect to the Revolving Loans and Letters of Credit); provided, however, that, whether as a result of any

term of any Loan Document or of such grant or participation, (i) no such SPV or participant shall have a commitment, or be deemed to have made an offer to commit, to make Loans hereunder, and, except as provided in the applicable option agreement, none shall be liable for any obligation of such Lender hereunder, (ii) such Lender's rights and obligations, and the rights and obligations of Borrower and the Secured Parties towards such Lender, under any Loan Document shall remain unchanged and each other party hereto shall continue to deal solely with such Lender, which shall remain the holder of the Obligations in the Register, except that (A) each such participant and SPV shall be entitled to the benefit of Sections 2.16 (Breakage Costs; Increased Costs; Capital Requirements) and 2.17 (Taxes), but only to the extent such participant or SPV delivers the tax forms such Lender is required to collect pursuant to Section 2.17(f) and then only to the extent of any amount to which such Lender would be entitled in the absence of any such grant or participation and (B) each such SPV may receive other payments that would otherwise be made to such Lender with respect to Loans funded by such SPV to the extent provided in the applicable option agreement and set forth in a notice provided to the Administrative Agent by such SPV and such Lender, provided, however, that in no case (including pursuant to clause (A) or (B) above) shall an SPV or participant have the right to enforce any of the terms of any Loan Document, and (iii) the consent of such SPV or participant shall not be required (either directly, as a restraint on such Lender's ability to consent hereunder or otherwise) for any amendments, waivers or consents with respect to any Loan Document or to exercise or refrain from exercising any powers or rights such Lender may have under or in respect of the Loan Documents (including the right to enforce or direct enforcement of the Obligations), except for those described in clauses (iii) and (iv) of Section 11.1(a) with respect to amounts, or dates fixed for payment of amounts, to which such participant or SPV would otherwise be entitled and, in the case of participants, except for those described in Section 11.1(a)(v) (or amendments, consents and waivers with respect to Section 10.10 to release all or substantially all of the Collateral). No party hereto shall institute against any SPV grantee of an option pursuant to this clause (f) any bankruptcy, reorganization, insolvency, liquidation or similar proceeding, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper of such SPV; provided, however, that each Lender having designated an SPV as such agrees to indemnify each Indemnitee against any Liability that may be incurred by, or asserted against, such Indemnitee as a result of failing to institute such proceeding (including a failure to get reimbursed by such SPV for any such Liability). The agreement in the preceding sentence shall survive the termination of the Commitments and the payment in full of the Obligations.

Section 11.3 Costs and Expenses. Any action taken by the Borrower under or with respect to any Loan Document, even if required under any Loan Document or at the request of any Secured Party, shall be at the expense of the Borrower, and no Secured Party shall be required under any Loan Document to reimburse the Borrower or Group Member therefor except as expressly provided therein. In addition, the Borrower agrees to pay or reimburse upon demand (a) the Administrative Agent for all reasonable out-of-pocket costs and expenses incurred by it or any of its Related Persons in connection with the investigation, development, preparation, negotiation, syndication, execution, interpretation or administration of, any modification of any term of or termination of, any Loan Document, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein (including periodic audits and appraisals in connection therewith and environmental audits and assessments), in each case including the reasonable fees, charges and disbursements of legal counsel to the Administrative Agent or such Related Persons, reasonable fees, costs and expenses incurred in connection with Intralinks® or any other E-System and reasonable fees, charges and disbursements of the auditors, appraisers, printers and other of their Related Persons retained by or on behalf of any of them or any of their Related Persons, (b) the Administrative Agent for all reasonable costs and expenses incurred by it or any of its Related Persons in connection with internal audit reviews, field examinations and Collateral examinations (which shall be reimbursed, in addition to the reasonable out-of-pocket costs and expenses of such examiners, at the per diem rate per individual charged by the Administrative Agent for its

examiners) and (c) each of the Administrative Agent, its Related Persons, and each Lender and L/C Issuer for all costs and expenses incurred in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out", (ii) the enforcement or preservation of any right or remedy under any Loan Document, any Obligation, with respect to the Collateral or any other related right or remedy or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Group Member, Loan Document, Obligation or Related Transaction (or the response to and preparation for any subpoena or request for document production relating thereto), including fees and disbursements of counsel, limited, solely in the case of Lenders other than the Administrative Agent, to one legal counsel.

Section 11.4 Indemnities. (a) The Borrower agrees to indemnify, hold harmless and defend the Administrative Agent, each Lender, each L/C Issuer, each Secured Hedging Counterparty, each Person that each L/C Issuer causes to Issue Letters of Credit hereunder and each of their respective Related Persons (each such Person being an "Indemnitee") from and against all Liabilities (including brokerage commissions, fees and other compensation) that may be imposed on, incurred by or asserted against any such Indemnitee in any matter relating to or arising out of, in connection with or as a result of (i) any Loan Document, any Related Document, any Disclosure Document, any Obligation (or the repayment thereof), any Letter of Credit, the use or intended use of the proceeds of any Loan or the use of any Letter of Credit, any Related Transaction, or any securities filing of, or with respect to, any Group Member, (ii) any commitment letter, proposal letter or term sheet with any Person or any Contractual Obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Group Member or any Affiliate of any of them in connection with any of the foregoing and any Contractual Obligation entered into in connection with any E-Systems or other Electronic Transmissions, (iii) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of Securities or creditors (and including attorneys' fees in any case), whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise, or (iv) any other act, event or transaction related, contemplated in or attendant to any of the foregoing (collectively, the "Indemnified Matters"); provided, however, that the Borrower shall not have any liability under this Section 11.4 to any Indemnitee with respect to any Indemnified Matter, and no Indemnitee shall have any liability with respect to any Indemnified Matter other than (to the extent otherwise liable), to the extent such liability has resulted primarily from the gross negligence, bad faith or willful misconduct of such Indemnitee, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. Furthermore, the Borrower waives and agrees not to assert against any Indemnitee any right of contribution with respect to any Liabilities that may be imposed on, incurred by or asserted against any Related Person.

(b) Without limiting the foregoing, "Indemnified Matters" includes all Environmental Liabilities, including those arising from, or otherwise involving, any property of any Related Person or any actual, alleged or prospective damage to property or natural resources or harm or injury alleged to have resulted from any Release of Hazardous Materials on, upon or into such property or natural resource or any property on or, to the extent caused or alleged to have been caused by any Related Person, contiguous to any real property of any Related Person, whether or not, with respect to any such Environmental Liabilities, any Indemnitee is a mortgagee pursuant to any leasehold mortgage, a mortgagee in possession, the successor-in-interest to any Related Person or the owner, lessee or operator of any property of any Related Person through any foreclosure action, in each case except to the extent such Environmental Liabilities (i) are incurred solely following foreclosure by any Secured Party or following any Secured Party having become the successor-in-interest to the Borrower and (ii) are attributable solely to acts of such Indemnitee.

Section 11.5 Survival. Any indemnification or other protection provided to any Indemnatee pursuant to any Loan Document (including pursuant to Section 2.17 (Taxes), Section 2.16 (Breakage Costs; Increased Costs; Capital Requirements), Article X (The Administrative Agent), Section 11.3 (Costs and Expenses), Section 11.4 (Indemnities) or this Section 11.5) and all representations and warranties made in any Loan Document shall (A) survive the termination of the Commitments and the payment in full of other Obligations and (B) inure to the benefit of any Person that at any time held a right thereunder (as an Indemnatee or otherwise) and, thereafter, its successors and permitted assigns.

Section 11.6 Limitation of Liability for Certain Damages. In no event shall any Indemnatee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including any loss of profits, business or anticipated savings). The Borrower hereby waives, releases and agrees not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

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

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

Section 11.9 Sharing of Payments, Etc. If any Lender, directly or through an Affiliate or branch office thereof, obtains any payment of any Obligation of the Borrower (whether voluntary, involuntary or through the exercise of any right of setoff or the receipt of any Collateral or "proceeds" (as defined under the applicable UCC) of Collateral) other than pursuant to Sections 2.16 (Breakage Costs; Increased Costs; Capital Requirements), 2.17 (Taxes) and 2.18 (Substitution of Lenders) and such payment exceeds the amount such Lender would have been entitled to receive if all payments had gone to, and been distributed by, the Administrative Agent in accordance with the provisions of the Loan Documents, such Lender shall purchase for cash from other Secured Parties such participations in their Obligations as necessary for such Lender to share such excess payment with such Secured Parties to ensure such payment is applied as though it had been received by the Administrative Agent and applied in accordance with this Agreement (or, if such application would then be at the discretion of the Borrower,

applied to repay the Obligations in accordance herewith); provided, however, that (a) if such payment is rescinded or otherwise recovered from such Lender or L/C Issuer in whole or in part, such purchase shall be rescinded and the purchase price therefor shall be returned to such Lender or L/C Issuer without interest and (b) such Lender shall, to the fullest extent permitted by applicable Requirements of Law, be able to exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 11.10 Marshaling; Payments Set Aside. No Secured Party shall be under any obligation to marshal any property in favor of the Borrower or any other party or against or in payment of any Obligation. To the extent that any Secured Party receives a payment from the Borrower, from the proceeds of the Collateral, from the exercise of its rights of setoff, any enforcement action or otherwise, and such payment is subsequently, in whole or in part, invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not occurred.

Section 11.11 Notices. (a) Addresses. All notices, demands, requests, directions and other communications required or expressly authorized to be made by this Agreement shall, whether or not specified to be in writing but unless otherwise expressly specified to be given by any other means, be given in writing and (i) addressed to (A) if to the Borrower, to 7777 Washington Village Drive, Suite 130, Dayton, Ohio 45459, Attention: Edward J. Puisis, Fax: (937) 428-9115, with copy to Latham & Watkins, 885 Third Avenue, Suite 1000, New York, New York 10022, Attention: Kirk Davenport, Fax: (212) 751-4864, (B) if to the Administrative Agent or the Swingline Lender, to General Electric Capital Corporation, 401 Merritt 7, 1st Floor, Norwalk, CT 06851, CFN [8845], Attention: Stephanie Kane, Fax: [], with copy to King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036, Attention: Robert S. Finley, Fax: (212) 556-2222 and (C) otherwise to the party to be notified at its address on the signature page of any applicable Assignment, (ii) posted to Intralinks® (to the extent such system is available and set up by or at the direction of the Administrative Agent prior to posting) in an appropriate location by uploading such notice, demand, request, direction or other communication to www.intralinks.com, faxing it to 866-545-6600 with an appropriate bar-coded fax coversheet or using such other means of posting to Intralinks® as may be available and reasonably acceptable to the Administrative Agent prior to such posting, (iii) posted to any other E-System set up by or at the direction of the Administrative Agent in an appropriate location or (iv) addressed to such other address as shall be notified in writing (A) in the case of the Borrower, the Administrative Agent and the Swingline Lender, to the other parties hereto and (B) in the case of all other parties, to the Borrower and the Administrative Agent. Transmission by electronic mail (including E-Fax, even if transmitted to the fax numbers set forth in clause (i) above) shall not be sufficient or effective to transmit any such notice under this clause (a) unless such transmission is an available means to post to any E-System.

(b) Effectiveness. All communications described in clause (a) above and all other notices, demands, requests and other communications made in connection with this Agreement shall be effective and be deemed to have been received (i) if delivered by hand, upon personal delivery, (ii) if delivered by overnight courier service, one Business Day after delivery to such courier service, (iii) if delivered by mail, when deposited in the mails, (iv) if delivered by facsimile (other than to post to an E-System pursuant to clause (a)(ii) or (a)(iii) above), upon sender's receipt of confirmation of proper transmission, and (v) if delivered by posting to any E-System, on the later of the date of such posting in an appropriate location and the date access to such posting is given to the recipient thereof in accordance with the standard procedures applicable to such E-System; provided, however, that no communications to the Administrative Agent pursuant to Article II or Article X shall be effective until received by the Administrative Agent.

Section 11.12 Electronic Transmissions. (a) Authorization. Subject to the provisions of Section 11.11(a), each of the Administrative Agent, the Borrower, the Lenders, the L/C Issuers and each of their Related Persons is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein. Each of the Borrower and each other Group Member and each Secured Party hereby acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(b) Signatures. Subject to the provisions of Section 11.11(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a "signature" and (C) each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any UCC, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which each Secured Party and Borrower may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party's or beneficiary's right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(c) Separate Agreements. All uses of an E-System shall be governed by and subject to, in addition to Section 11.11 and this Section 11.12, separate terms and conditions posted or referenced in such E-System and related Contractual Obligations executed by Secured Parties and Group Members in connection with the use of such E-System.

(d) Limitation of Liability. All E-Systems and Electronic Transmissions shall be provided "as is" and "as available". None of Administrative Agent or any of its Related Persons warrants the accuracy, adequacy or completeness of any E-Systems or Electronic Transmission, and each disclaims all liability for errors or omissions therein. No Warranty of any kind is made by the Administrative Agent or any of its Related Persons in connection with any E-Systems or Electronic Communication, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects. The Borrower and each Secured Party agrees that the Administrative Agent has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

Section 11.13 Governing Law. This Agreement, each other Loan Document that does not expressly set forth its applicable law, and the rights and obligations of the parties hereto and thereto shall be governed by, and construed and interpreted in accordance with, the law of the State of New York.

Section 11.14 Jurisdiction. (a) Submission to Jurisdiction. Any legal action or proceeding with respect to any Loan Document may be brought in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States for the Southern District of New York and, by execution and delivery of this Agreement, the Borrower hereby accepts for itself

and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(b) Service of Process. The Borrower hereby irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable Requirements of Law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of the Borrower specified in Section 11.11 (and shall be effective when such mailing shall be effective, as provided therein). The Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Non-Exclusive Jurisdiction. Nothing contained in this Section 11.14 shall affect the right of the Administrative Agent or any Lender to serve process in any other manner permitted by applicable Requirements of Law or commence legal proceedings or otherwise proceed against the Borrower in any other jurisdiction.

Section 11.15 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREIN OR RELATED THERETO (WHETHER FOUNDED IN CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PERSON OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THE LOAN DOCUMENTS, AS APPLICABLE, BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

Section 11.16 Severability. Any provision of any Loan Document being held illegal, invalid or unenforceable in any jurisdiction shall not affect any part of such provision not held illegal, invalid or unenforceable, any other provision of any Loan Document or any part of such provision in any other jurisdiction.

Section 11.17 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or Electronic Transmission shall be as effective as delivery of a manually executed counterpart hereof.

Section 11.18 Entire Agreement. The Loan Documents embody the entire agreement of the parties and supersede all prior agreements and understandings relating to the subject matter thereof and any prior letter of interest, commitment letter, fee letter, confidentiality and similar agreements involving the Borrower and any of the Administrative Agent, any Lender or any L/C Issuer or any of their respective Affiliates relating to a financing of substantially similar form, purpose or effect. In the event of any conflict between the terms of this Agreement and any other Loan Document, the terms of this

Agreement shall govern (unless such terms of such other Loan Documents are necessary to comply with applicable Requirements of Law, in which case such terms shall govern to the extent necessary to comply therewith).

Section 11.19 Use of Name. The Borrower agrees that it shall not, and none of its Affiliates shall, issue any press release or other public disclosure (other than any document filed with any Governmental Authority relating to a public offering of the Securities of the Borrower) using the name, logo or otherwise referring to GE Capital or of any of its Affiliates, the Loan Documents or any transaction contemplated therein to which the Secured Parties are party without at least 2 Business Days' prior notice to GE Capital and without the prior consent of GE Capital except to the extent required to do so under applicable Requirements of Law and then, only after consulting with GE Capital prior thereto.

Section 11.20 Non-Public Information; Confidentiality. (a) Each Lender and L/C Issuer and the Administrative Agent acknowledges and agrees that it may receive material non-public information hereunder concerning the Borrower and its Affiliates and Securities and agrees to use such information in compliance with all relevant policies, procedures and Contractual Obligations and applicable Requirements of Laws (including United States federal and state security laws and regulations).

(b) Each Lender, L/C Issuer and the Administrative Agent agrees to use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Loan Document and designated in writing by the Borrower as confidential, except that such information may be disclosed (i) with the Borrower's consent, (ii) to Related Persons of such Lender, L/C Issuer or the Administrative Agent, as the case may be, or to any Person that any L/C Issuer causes to Issue Letters of Credit hereunder, that are advised of the confidential nature of such information and are instructed to keep such information confidential, (iii) to the extent such information presently is or hereafter becomes available to such Lender, L/C Issuer or the Administrative Agent, as the case may be, on a non-confidential basis from a source other than the Borrower, (iv) to the extent disclosure is required by applicable Requirements of Law or other legal process or requested or demanded by any Governmental Authority; provided that, unless prohibited by applicable Requirements of Law or by the rules governing the process requiring such disclosure, (x) it will promptly notify the Borrower of the existence, terms and circumstances surrounding such requirement, (y) it will consult with the Borrower on the advisability of taking legally available steps to resist or narrow such requirement, and (z) it will identify to the Borrower any such information which is legally required to be disclosed, (v) to the extent necessary or customary for inclusion in league table measurements or in any tombstone or other advertising materials (and the Borrower consents to the publication of such tombstone or other advertising materials by the Administrative Agent, any Lender, any L/C Issuer or any of their Related Persons), (vi) to the National Association of Insurance Commissioners or any similar organization, any examiner or any nationally recognized rating agency in each case to the extent required by such examiner, association, organization or agency in connection with the administration of the Loans, regulatory examinations or ratings or proposed rating of the Loans or otherwise to the extent consisting of general portfolio information that does not identify the Borrower or any of their Subsidiaries, (vii) to current or prospective assignees, SPVs grantees of any option described in Section 11.2(f) or participants, direct or contractual counterparties to any Hedging Agreement permitted hereunder and to their respective Related Persons, in each case to the extent such assignees, participants, counterparties or Related Persons agree to be bound by provisions substantially similar to the provisions of this Section 11.20 and (viii) in connection with the exercise of any remedy under any Loan Document. In the event of any conflict between the terms of this Section 11.20 and those of any other Contractual Obligation entered into with the Borrower (whether or not a Loan Document), the terms of this Section 11.20 shall govern.

Section 11.21 Patriot Act Notice. Each Lender subject to the USA Patriot Act of 2001 (31 U.S.C. 5318 et seq.) hereby notifies the Borrower that, pursuant to Section 326 thereof, it is required to obtain, verify and record information that identifies the Borrower, including the name and address of the Borrower and other information allowing such Lender to identify the Borrower in accordance with such Act.

Section 11.22 Parties Including Trustees; Bankruptcy Court Proceedings. This Agreement, the other Loan Documents and all Liens and other rights and privileges created hereby or pursuant hereto or to any other Loan Document shall be binding upon the Borrower, the estate of Borrower, and any trustee, other estate representative or any successor in interest of Borrower in the Chapter 11 Case or any subsequent case or proceeding commenced under chapter 7 of the Bankruptcy Code or similar insolvency laws, and shall not be subject to Section 365 of the Bankruptcy Code. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of Administrative Agent and Lenders and their respective assigns, transferees and endorsees. The Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of the Borrower to a case under chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that Administrative Agent file financing statements or otherwise perfect its Liens under applicable law. Borrower may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of Administrative Agent and Lenders. Any such purported assignment, transfer, hypothecation or other conveyance by the Borrower without the prior express written consent of Administrative Agent and Lenders shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of the Borrower, Administrative Agent and Lenders with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

Section 11.23 Pre-Petition Loan Documents. Borrower hereby agrees that (i) this Agreement is separate and distinct from the Pre-Petition Credit Agreement and (ii) the Pre-Petition Credit Agreement is in full force and effect. Borrower further agrees that by entering into this Agreement, Lenders do not waive any Default or Event of Default under the Pre-Petition Loan Documents or any of their Liens, claims, priorities, rights and remedies thereunder.

[SIGNATURE PAGES FOLLOW]

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

DAYTON SUPERIOR CORPORATION,
as the Borrower, debtor and debtor-in-
possession

By: _____
Name:
Title:

DAYTON SUPERIOR CANADA LTD.,
as a Group Member (as to Section 11.12)

By: _____
Name:
Title:

GENERAL ELECTRIC CAPITAL
CORPORATION, as Administrative Agent, L/C
Issuer, Swingline Lender and Lender

By: _____
Name:
Title:

SCHEDULE I
COMMITMENTS

<u>Lender</u>	<u>Initial Loan Commitment</u>
General Electric Capital Corporation	\$[101,722,762.97]
<u>Lender</u>	<u>Incremental Revolving Loan Commitment</u>
General Electric Capital Corporation	Part A - \$[54,353,129.53] Part B - \$[8,924,107.50]
Total	\$165,000,000.00

SCHEDULE II

**DAYTON SUPERIOR CORPORATION
PRE-PETITION LETTERS OF CREDIT**

Beneficiary	LOC #	Purpose	Type	Initial Issue Date	Expiration Date
TOTALS					

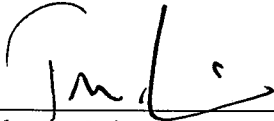
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
DAYTON SUPERIOR CORPORATION,	:	Case No. 09-11351 (BLS)
a Delaware corporation	:	
	:	
Debtor.	:	
	:	

CERTIFICATE OF SERVICE

I, Timothy P. Cairns, hereby certify that on the 20th day of April 2009, I caused a copy of the following documents to be served on the individuals on the attached service list in the manner indicated:

**OBJECTION OF THE AD HOC COMMITTEE OF BONDHOLDERS TO DEBTOR'S
MOTION FOR AN INTERIM AND FINAL ORDER AUTHORIZING THE DEBTOR TO
OBTAIN POST-PETITION FINANCING**



Timothy P. Cairns (Bar No. 4228)

**Dayton Superior - Core Email Service
List**

Case No. 09-11351 (BLS)
Doc. No. 147276
12 – Electronic Mail

Via Email

(Counsel to the Debtors)
John Knight, Esquire
Paul N. Heath, Esquire
Richards Layton & Finger PA
Knight@rlf.com
Heath@rlf.com

Via Email

(Counsel to the Debtors)
Mitchell Seider, Esquire
Keith Simon, Esquire
Latham & Watkins LLP
Mitchell.Seider@lw.com
Keith.Simon@lw.com

Via Email

(United States Trustee)
Mark Kenney, Esquire
Mark.Kenney@usdoj.gov

Via Email

(Counsel to GE Capital)
Arthur J. Steinberg
Sarah L. Taub, Esquire
Sarah R. Borders, Esquire
King & Spalding LLP
asteingberg@kslaw.com
staub@kslaw.com
sborders@kslaw.com

Via Email

(Counsel to GE Capital)
Stephen M. Miller, Esquire
Michael J. Custer, Esquire
Morris James LLP
mcuster@morrisjames.com
smiller@morrisjames.com

Via Email

(Counsel to Service Workers Union)
David R. Jury, Esquire
djury@usw.org

Via Email

(Counsel to the Service Workers Union)
Susan E. Kaufmann, Esquire
Cooch & Taylor PA
skaufman@coochtaylor.com