

**FORM OF LOAN AGREEMENT<sup>1</sup>**

Dated as of [\_\_\_\_\_], 2013

Among

**EASTMAN KODAK COMPANY,**  
as Company,

**THE U.S. SUBSIDIARIES OF EASTMAN KODAK COMPANY PARTY HERETO,**  
as U.S. Subsidiary Guarantors,

and

**THE LENDERS FROM TIME TO TIME PARTY HERETO,**  
as Lenders,

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION**  
as Agent

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<sup>1</sup> Subject to amendment in accordance with its terms.



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## LOAN AGREEMENT

This LOAN AGREEMENT, dated as of [\_\_\_\_], 2013, among EASTMAN KODAK COMPANY, a New Jersey corporation (the “Company”), the U.S. Subsidiaries of the Company party hereto, as Guarantors, the banks, financial institutions and other institutional lenders from time to time party hereto (the “Lenders”), and Wilmington Trust, National Association, as administrative agent and collateral agent for the Lenders.

### INTRODUCTORY STATEMENT

On January 19, 2012 (the “Petition Date”), the Company (such term and each other capitalized term used but not otherwise defined herein having the meaning assigned to it in Section 1.01) and each of the U.S. Subsidiary Guarantors (collectively, the “Debtors”) filed voluntary petitions with the Bankruptcy Court initiating their respective cases that are pending under Chapter 11 of the Bankruptcy Code (the cases of the Company and the U.S. Subsidiary Guarantors, each a “Case” and collectively, the “Cases”) and continued in the possession of their assets and in the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

Certain of the Lenders provided the Company with certain debtor-in-possession term loan facilities in an aggregate principal amount of \$[843,650,000], consisting of (i) first lien “first out” term loans in the aggregate principal amount of \$200,000,000, (ii) first lien “last out” term loans in the aggregate principal amount of \$[268,650,000], and (iii) second lien term loans in the aggregate principal amount of \$375,000,000, which were deemed made in exchange for certain Second Lien Debt (defined below).

WHEREAS, on [\_\_\_\_], 2013, the Bankruptcy Court entered the Confirmation Order confirming the Debtors’ Reorganization Plan under Chapter 11 of the Bankruptcy Code, dated [ ], 2013 (as in effect on the date of confirmation thereof and as thereafter may be amended as provided in this Agreement, the “Reorganization Plan”), providing for payment in full in cash of the then outstanding aggregate principal amount of First Lien First Out Loans (as defined in the Existing DIP Term Loan Agreement) on the Consummation Date and the conversion on the Consummation Date of the First Lien Last Out Loans and Junior Loans (each as defined in the Existing DIP Term Loan Agreement) to loans under an exit facility.

WHEREAS, in connection with the confirmation and implementation of the Reorganization Plan, the reorganized Debtors, have requested that the Lenders agree that (i) the First Lien Last Out Loans (as defined in the Existing DIP Term Loan Agreement) be rolled over into a tranche of first lien term loans in the aggregate principal amount of [\$268,650,000] and (ii) the Junior Loans (as defined in the Existing DIP Term Loan Agreement) be rolled over into a tranche of second lien term loans in the aggregate principal amount of \$375,000,000 (the “Facilities”), and the Lenders have agreed, subject to the terms and conditions hereof (and in accordance with the Existing DIP Term Loan Agreement), to enter into this Agreement.

Accordingly, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Account” has the meaning specified in the UCC, as the context may require.

“Accounting Change” has the meaning specified in Section 1.03.

“Activities” has the meaning specified in Section 8.02(b).

“Adjusted EBITDA” means, for any period, Consolidated Net Income for such period plus, without duplication and to the extent deducted in determining Consolidated Net Income, the sum of:

- (a) interest expense for such period,
- (b) income tax expense for such period,
- (c) depreciation expense for such period,
- (d) amortization expense (including with respect to intangibles) for such period,
- (e) deferred financing fees (and any writeoffs thereof) for such period,
- (f) (i) any extraordinary expenses or losses during such period and (ii) any non-recurring expenses or losses during such period not to exceed for purposes of subclause (ii) 5.00% of Adjusted EBITDA for such period (without giving effect to this clause (ii)),
- (g) any loss or expense from discontinued operations or discontinued business lines and loss or expense on disposal of discontinued operations or discontinued business lines during such period,
- (h) any non-cash charges or expenses, including, in respect of (A) any pre-petition obligations, liabilities or claims or (B) asset writeoffs or writedowns; provided, that to the extent any such non-cash charges represent an accrual or reserve for potential cash items in any future period, any cash payment made in respect thereof in a future period shall be subtracted from Adjusted EBITDA for such future period to such extent,
- (i) pension, equity awards, other post-employment benefits expense during such period and any non-cash compensation expense realized during such period from grants of stock appreciation rights or similar rights, stock options or other rights to directors, officers or employees,
- (j) any non-cash loss on foreign exchange during such period,

- (k) fees, costs and expenses (including (i) fees, costs and expenses related to legal, financial and other advisors, auditors and accountants, (ii) printer costs and expenses, (iii) SEC and other filing fees and (iv) underwriting, arrangement, syndication, backstop and placement premiums, discounts, fees, charges and expenses) incurred during such period in connection with the Cases, obtaining confirmation and effectiveness of the Reorganization Plan, negotiation and funding of this Agreement and the other Loan Documents and the Existing DIP Term Loan Agreement, Existing Revolving Credit Facility (and any Permitted Refinancing of the foregoing) and, in each case, any transaction (including any financing, acquisition or disposition, whether or not consummated) or litigation related thereto, in each case, regardless of whether initially incurred by the Company or paid by the Company to reimburse others for such fees, costs and expenses,
- (l) any non-cash loss relating to Hedge Agreements permitted under this Agreement (including any non-cash ASC 815 loss) during such period,
- (m) corporate restructuring charges (including retention, severance, contract termination costs, plant closure or consolidation costs, employee relocation and business optimization expenses) incurred during such period,
- (n) any charges resulting from fresh start accounting; and
- (o) any cash expenses or losses funded during such period with payments from assets of the Kodak Retirement Income Plan as in effect on the Petition Date,

minus, without duplication and to the extent included determining Consolidated Net

Income:

- (i) interest income for such period,
- (ii) revenues from IP licensing transactions effected in connection with IP Settlement Agreements during such period,
- (iii) pension and other post-employment benefits income and credit during such period,
- (iv) any non-cash gains on foreign exchange during such period,
- (v) any extraordinary income or gains or non-recurring income during such period,
- (vi) any non-cash gain relating to Hedge Agreements permitted under this Agreement (including any non-cash ASC 815 gain) for such period,
- (vii) any income or gain from discontinued operations or discontinued business lines and any income or gain on disposal of discontinued operations or discontinued business lines in each case for such period, and
- (viii) any other non-cash income (other than the accrual of revenue in the ordinary course of business) for such period excluding any non-cash gain to the extent it



represents the reversal of an accrual or reserve for a potential cash item that reduced Adjusted EBITDA in any prior period.

“Administrative Questionnaire” means an Administrative Questionnaire in the form approved by the Agent.

“Affected Lender” has the meaning specified in Section 2.17.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or executive officer of such Person. For purposes of this definition, the term “control” (including the terms “controlling”, “controlled by” and “under common control with”) of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

“Agent” means Wilmington Trust, National Association, in its capacity as administrative agent and collateral agent under the Loan Documents, or any successor administrative agent and collateral agent appointed in accordance with Section 8.07.

“Agent Parties” has the meaning specified in Section 9.02(d).

“Agent’s Account” means the account of the Agent maintained by the Agent at its office as set forth on Schedule 9.02.

“Agent’s Group” has the meaning specified in Section 8.02(b).

“Agreement” means this Loan Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Applicable Lending Office” means, with respect to each Lender, such Lender’s Domestic Lending Office in the case of a Base Rate Loan and such Lender’s Eurodollar Lending Office in the case of a Eurodollar Rate Loan.

“Applicable Margin” means (a) with respect to First Lien Loans (i) 9.50% per annum, in the case of Eurodollar Rate Loans and (ii) 8.50%, in the case of Base Rate Loans and (b) with respect to Junior Loans (i) 12.00% per annum, in the case of Eurodollar Rate Loans and (ii) 11.00%, in the case of Base Rate Loans.

“Applicable Prepayment Percentage” means, with respect to Net Cash Proceeds of the Specified Sale (i) up to \$200,000,000, 100%, (ii) in excess of \$200,000,000, but less than or equal to the Minimum Proceeds Amount, 0%, and (iii) in excess of the Minimum Proceeds amount, 75%.

“Appropriate Lender” means (i) in respect of the First Lien Loans, each First Lien Lender and (iii) in respect of the Junior Loans, each Junior Loan Lender.

“Approved Fund” means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

“Asset Sale” means any Disposition of property or series of related Dispositions of property excluding (i) any such Disposition permitted by any clause of Section 5.02(e) (other than clause (ii), (iii), (vii) or (viii) thereof) and (ii) any other Disposition or series of related Dispositions (valued at

the initial principal amount thereof in the case of non-cash proceeds consisting of notes or other debt securities and valued at fair market value in the case of other non-cash proceeds), by (x) Subsidiaries of the Company that are not Loan Parties so long as the Net Cash Proceeds received by such Subsidiaries therefrom do not exceed \$500,000 for any single Disposition or series of related Dispositions, or (y) Loan Parties so long as the Net Cash Proceeds received by such Loan Parties therefrom do not exceed (1) \$500,000 for any single Disposition or series of related Dispositions, and (2) \$5,000,000 in the aggregate for all such Dispositions in any fiscal year.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.

“Bankruptcy Code” means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Section 101 et seq.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Cases from time to time.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as published in the Wall Street Journal is the “prime rate” and (c) the Eurodollar Rate for a one-month Interest Period (after giving effect to the proviso to the definition of Eurodollar Base Rate) on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.00%. Any change in such prime rate or base rate shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Loan that bears interest as provided in Section 2.05(a)(i).

“Borrowing” means a deemed borrowing consisting of simultaneous Loans of the same Type made by the Lenders.

“Business Day” means a day of the year on which banks are not required or authorized by law to close in New York City and, if the applicable Business Day relates to any Eurodollar Rate Loans, on which dealings are carried on in the London interbank market.

“Capital Expenditures” shall mean, for any person in respect of any period, the aggregate of all expenditures incurred by such Person during such period that, in accordance with GAAP, are or would be included in “additions to property, plant or equipment” or similar items reflected in the statement of cash flows of such Person, but excluding (a) 50% of expenditures in any period that would otherwise be “Capital Expenditures” made with proceeds that would otherwise be “Net Cash Proceeds” but for the last proviso of the definition of Net Cash Proceeds, (b) expenditures in any period that would otherwise be “Capital Expenditures” made with proceeds that would otherwise be “Net Cash Proceeds” but for the second to last proviso of the definition of Net Cash Proceeds, (c) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time and (d) any investments made pursuant to Section 5.02(i)(vii). In calculating “Capital Expenditures” to the extent that the “Maximum Capital Expenditures” for any prior period exceed the actual Capital Expenditures for such period, an amount equal to 50% of such excess shall carry-over to the subsequent fiscal year (the “Excess Amount”). The Excess Amount shall offset on a dollar-for-dollar basis any Capital Expenditures in the applicable period until the Excess Amount is equal to zero.

“Case” or “Cases” has the meaning specified in the Introductory Statement.

“Cash Equivalents” means any of the following having a maturity of not greater than 12 months from the date of issuance thereof: (a) readily marketable direct obligations of the Government of the United States or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the Government of the United States, (b) certificates of deposit of or time deposits with any commercial bank that is a Lender or a member of the Federal Reserve System that issues (or the parent of which issues) commercial paper rated as described in clause (c), is organized under the laws of the United States or any state thereof and has combined capital and surplus of at least \$500,000,000, (c) commercial paper in an aggregate amount of no more than \$10,000,000 per issuer outstanding at any time, issued by any corporation organized under the laws of any state of the United States and rated at least “Prime 1” (or the then equivalent grade) by Moody’s or “A 1” (or the then equivalent grade) by S&P or (d) Investments, classified in accordance with GAAP, as current assets of the Company or any of its Subsidiaries, in money market investment funds having the highest rating obtainable from either Moody’s or S&P, (e) offshore overnight interest bearing deposits in foreign branches of the Agent, any Lender or an Affiliate of a Lender, or (f) solely with respect to any Subsidiaries of the Company not domiciled in the United States, substantially similar investments as described in clauses (a) through (e) above (including as to credit quality and maturity), denominated in the currency of any jurisdiction in which any such Subsidiary conducts business.

“Cash Interest Coverage Ratio” shall mean, on any date, the ratio of (a) Adjusted EBITDA to (b) Cash Interest Expense, in each case, for the applicable period of four consecutive fiscal quarters of the Company, all determined for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

“Cash Interest Expense” shall mean with respect to any Person on a consolidated basis for any period, the Interest Expense related to all funded debt, secured or unsecured, and outstanding letters of credit, for such period, less, without duplication, the sum of (a) pay-in-kind Interest Expense or other noncash Interest Expense (including as a result of the effects of purchase accounting), (b) to the extent included in Interest Expense, the amortization of any financing fees paid by, or on behalf of, the Company or any of its Subsidiary, including such fees paid in connection with the execution and delivery of this Agreement, the Loan Documents and the deemed extensions of credit hereunder, (c) the amortization of debt discounts, if any, or fees in respect of Hedge Agreements and (d) cash interest income of the Company and any of its the Subsidiaries for such period; provided that Cash Interest Expense shall exclude any one-time financing fees paid in connection with the execution and delivery of this Agreement, the Loan Documents and the deemed extensions of credit hereunder or one-time amendment, waiver or consent fees paid in connection with any amendment, waiver of or consent to or in connection with this Agreement.

“Casualty Event” shall mean any event that gives rise to the receipt by the Company or any Subsidiary of any insurance proceeds or condemnation awards in respect of any assets or properties.

“CFC” means an entity that is a “controlled foreign corporation” of the Company under Section 957 of the Code or an entity all or substantially all of the assets of which are CFC’s, and any entity which would be a “controlled foreign corporation” except for any alternate classification under Treasury Regulation 301.7701-3, or any successor provisions to the foregoing.

“CI” means the assets and operations of the Company’s digital printing and enterprise and graphics, entertainment and commercial films businesses, as well as brand licensing.

“CI Adjusted EBITDA” means, for any period, CI Net Income for such period plus, without duplication and to the extent deducted in determining CI Net Income, the sum of items (a) through (n) in the definition of “Adjusted EBITDA”; minus, without duplication and to the extent included in CI Net Income, items (i) through (viii) in the definition of “Adjusted EBITDA”, in each case to the extent relating to CI.

“CI Net Income” means, for any period, the Consolidated net income of CI for such period, determined in accordance with GAAP.

“Class” means (i) with respect to any Loans, whether such Loans are First Lien Loans or Junior Loans, and (ii) with respect to any Lenders, whether such Lenders are First Lien Lenders or Junior Loan Lenders.

“Code” means the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

“Collateral” means all “Collateral” referred to in the Collateral Documents and all other property that is or is intended to be subject to any Lien in favor of the Agent for the benefit of the Secured Parties pursuant to the terms of the Collateral Documents.

“Collateral Documents” means the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, the Deposit Account Control Agreements<sup>2</sup> and each of the collateral documents, instruments and agreements entered into in connection with this Agreement that grants or purports to grant a Lien in favor of the Agent for the benefit of the Secured Parties on the assets of any Loan Party, including those delivered pursuant to Section 5.01(i) or (j).

“Company” has the meaning specified in the preamble.

“Confirmation Order” has the meaning specified in Section 3.01.

“Consolidated” refers to the consolidation of accounts in accordance with GAAP.

“Consolidated Net Income” means as to any Person for any period the consolidated net income of such Person and its subsidiaries for that period determined in accordance with GAAP.

“Consolidated Subsidiary” means any Person whose accounts are consolidated with the accounts of the Company in accordance with GAAP.

“Consummation Date” means [ ], 2013.<sup>3</sup>

“Conversion Adjusted EBITDA” means (x) with respect to calendar months occurring in the fiscal year ending December 31, 2013, ending 15 days or more prior to the Conversion Date, CI Adjusted EBITDA and (y) with respect to any other calendar month occurring in the fiscal year ending December 31, 2013, Forecasted 2013 EBITDA for such calendar month. Conversion Adjusted EBITDA shall be calculated on a pro forma basis to give effect to the wind-down of the consumer inkjet business and the Specified Sale (including any stranded costs).

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<sup>2</sup> Mortgages and Deposit Account Agreements to be post-closing items.

<sup>3</sup> Date on which substantial consummation of reorganization plan occurs to be inserted

“Conversion Date” means the first date on which all of the conditions precedent in Article III are satisfied or waived in accordance with Article III (other than those conditions which are of a nature to be satisfied concurrently with the Conversion Date).

“Conversion Secured Leverage Ratio” means the ratio of the Borrower’s (x) Secured Debt, as of such date, to (y) Conversion Adjusted EBITDA of the Company and its Subsidiaries for the fiscal year ending December 31, 2013.

“Conversion Junior Loan Refinancing Debt” has the meaning specified in Section 2.20.

“Convert”, “Conversion” and “Converted” each refers to a conversion of Loans of one Type into Loans of the other Type, in each case pursuant to Section 2.06 or 2.07.

“Debt” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money (including, without limitation, pursuant to securitization transactions), (b) to the extent such obligations would appear as a liability of such Person in accordance with GAAP, all obligations of such Person for the deferred purchase price of property or services (other than trade payables incurred in the ordinary course of such Person’s business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though 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), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) the face or maximum amount of all obligations of such Person which have been or may be drawn upon under acceptances, letters of credit or similar extensions of credit, (g) all Hedge Agreement Obligations of such Person, (h) all payment obligations of other Persons whose financial statements are not Consolidated with those of such Person (collectively, “Guaranteed Debt”) guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Guaranteed Debt or to advance or supply funds for the payment or purchase of such Guaranteed Debt, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, expressly for the purpose of enabling the debtor to make payment of such Guaranteed Debt or to assure the holder of such Guaranteed Debt against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor of such other Person against loss, and (i) all Debt of the type referred to in clauses (a) through (h) above secured by (or for which the holder of such Debt has an existing right to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Debt.

“Default” means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

“Default Interest” has the meaning specified in Section 2.05(b).

“Defaulting Lender” means, at any time, a Lender as to which the Agent has notified the Company that a Lender Insolvency Event has occurred and is continuing with respect to such Lender. Any determination that a Lender is a Defaulting Lender will be made by the Agent in its sole discretion acting in good faith. The Agent will promptly send to all parties hereto a copy of any notice to the Company provided for in this definition.

“Digital Imaging Patent Portfolio” means the portfolio of approximately 1,100 issued U.S. digital imaging patents, 250 pending U.S. digital imaging patent applications, 580 foreign counterparts and 400 related foreign patent applications, which were the subject of the transaction that was consummated on February 1, 2013.

“Disposition” means, with respect to any property, any sale, lease, transfer or other disposition thereof. The terms “Dispose” and “Disposed of” shall have correlative meanings. For the avoidance of doubt, a non-exclusive license of Intellectual Property in the ordinary course of business does not constitute a Disposition.

“Disqualified Lender” means (i) the Persons previously identified to the Lead Lenders and the Agent in connection with the Commitment Letter, dated [ ], 2012<sup>4</sup> (as amended, supplemented, or otherwise modified from time to time) for the Facilities and (ii) other bona fide competitors of the Company identified by the Company, from time to time, in writing to the Agent.

“Dollar” or “\$” means the lawful currency of the United States.

“Domestic Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Agent.

“Effective Date” means the effective date of the Reorganization Plan.

“Eligible Assignee” means (i) a Lender; (ii) an Affiliate or branch of a Lender or an Approved Fund with respect to a Lender; and (iii) any other Person approved by the Agent, such approval not to be unreasonably withheld or delayed; provided, however, that no Loan Party or Affiliate of a Loan Party or any Disqualified Lender shall qualify as an Eligible Assignee.

“Environmental Action” means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating to any Environmental Law, Environmental Permit or arising from alleged injury or threat of injury to health or safety from Hazardous Materials or the environment, including, without limitation, (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

“Environmental Law” means any federal, state, provincial, municipal, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health and safety as it relates to any Hazardous Materials or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equipment” has the meaning specified in the UCC, as the context may require.

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<sup>4</sup> To be brought down on the Conversion Date

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“ERISA Affiliate” means any Person that for purposes of Title IV of ERISA is a member of the controlled group of any Loan Party, or under common control with any Loan Party, within the meaning of Section 414 of the Code.

“ERISA Event” means (a)(i) the occurrence of a reportable event, as described in 29 CFR § 4043, with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in 29 CFR § 4043.62 through 68 is reasonably expected to occur with respect to such Plan within the following 30 days; provided that for purposes of this clause (a), a reportable event shall not include the events set forth in §4043.35(a); (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Loan Party or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by any Loan Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan; (g) a determination that any Plan is in “at risk” status (within the meaning of Section 303 of ERISA); or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA.

“Eurodollar Base Rate” means, for such Interest Period, the rate per annum equal to the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters on Screen LIBOR01 (or other commercially available source providing quotations of BBA LIBOR as designated by the Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurodollar Base Rate” for such Interest Period shall be the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted by the Agent and with a term equivalent to such Interest Period would be offered by the Agent’s London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period; provided, that the Eurodollar Base Rate with respect to the Loans shall be not less than 1.00%.

“Eurodollar Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Agent.

“Eurodollar Rate” means for any Interest Period with respect to a Eurodollar Rate Loan, a rate per annum determined by the Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

“Eurodollar Rate Loan” means a Loan that bears interest as provided in Section 2.05(a)(ii).

“Eurodollar Reserve Percentage” means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The Eurodollar Rate for each outstanding Eurodollar Rate Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

“Events of Default” has the meaning specified in Section 6.01.

“Excess Cash Flow” means, with respect to any Excess Cash Flow Period, an amount equal to Worldwide Cash as of the last day of such Excess Cash Flow Period, minus Worldwide Cash as of the first day of such Excess Cash Flow Period, minus any Worldwide Cash resulting from any Asset Sale or Casualty Event or the incurrence of any Indebtedness permitted hereunder; provided that if such amount is equal to a negative number it shall be deemed to equal zero for such period. The determination of “Excess Cash Flow” is subject to the adjustment set forth in Section 2.08(b)(vi).

“Excess Cash Flow Calculation Date” has the meaning specified in Section 2.08(b)(iii).

“Excess Cash Flow Period” means each fiscal year of the Company, commencing with the fiscal year ended December 31, 2014.

“Excess Cash Trigger Amount” has the meaning specified in Section 2.08(b)(iii).

“Excluded Accounts” [has the meaning set forth in the Security Agreement.]

“Excluded Taxes” has the meaning specified in Section 2.12(a).

“Existing DIP Term Loan Agreement” has the meaning specified in the recitals hereto.

“Existing Revolving Credit Facility” means [ ].<sup>5</sup>

“Facilities” has the meaning specified in the Introductory Statement.

“FATCA” means Sections 1471-1474 of the Code in effect as of the date hereof and Treasury regulations issued thereunder.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded

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<sup>5</sup> To insert reference to Revolving Credit Facility at Conversion



upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent.

“Fee Letter” has the meaning specified in Section 2.03.

“First Lien Lender” means, at any time, a Lender with an outstanding First Lien Loan at such time.

“First Lien Loan” has the meaning specified in Section 2.01(a).

“Forecasted 2013 EBITDA” shall mean, with respect to each month in the fiscal year ending December 31, 2013, the amounts set forth in Schedule [\_\_\_\_].<sup>6</sup>

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fund” means any Person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

“GAAP” has the meaning specified in Section 1.03.

“Guaranteed Obligations” has the meaning specified in Section 7.01(a).

“Guarantors” means the direct and indirect wholly-owned (other than directors’ qualifying shares or similar holdings under applicable law) U.S. Subsidiaries of the Company listed on Part A of Schedule II hereto, including each other Subsidiary of the Company that shall be required to execute and deliver a guaranty pursuant to Section 5.01(i).

“Guaranty” means the guaranty of each Guarantor set forth in Article VII.

“Guaranty Supplement” has the meaning specified in Section 7.05.

“Harrow Sale” means the sale of real property in the United Kingdom identified by the Company to the Lead Lenders prior to the date hereof as the “Harrow Sale”.

“Hazardous Materials” means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

“Hedge Agreement Obligations” means the aggregate net liabilities, on a mark-to-market basis as determined in accordance with GAAP, for all Hedge Agreements of a Person calculated as of the end of the most recent month.

“Hedge Agreements” means interest rate, currency or commodity swap, cap or collar agreements, interest rate, currency or commodity future or option contracts and other similar agreements.

“HMRC” means Her Majesty’s Revenue & Customs.

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<sup>6</sup>To be consistent with the amounts previously agreed unless otherwise agreed.

“Intellectual Property” has the meaning specified in Section 4.01(i).

“Intellectual Property Security Agreement” means a “short form” intellectual property security agreement substantially in the form of Exhibit A to the Security Agreement.

“Intercreditor Agreement” means [ ].<sup>7</sup>

“Interest Expense” shall mean, with respect to any Person for any period, the sum of, without duplication, (a) gross interest expense of such person for such period on a consolidated basis, including (i) the amortization of debt discounts, (ii) the amortization of all fees (including fees with respect to Hedge Agreements) payable in connection with the incurrence of Debt to the extent included in interest expense, (iii) the portion of any payments or accruals with respect to capital leases allocable to interest expense and (iv) net payments and receipts (if any) pursuant to interest rate hedging obligations, and excluding amortization of deferred financing fees and expensing of any bridge or other financing fees, (b) capitalized interest of such person, whether paid or accrued, and (c) commissions, discounts, yield and other fees and charges incurred for such period in connection with any receivables financing of such person or any of its subsidiaries that are payable to persons other than the Company and any of its Subsidiaries.

“Interest Period” means, for each Eurodollar Rate Loan comprising part of the same Borrowing, the period commencing on the date of such Eurodollar Rate Loan or the date of the Conversion of any Base Rate Loan into such Eurodollar Rate Loan and ending on the last day of the period selected by the Company pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by such Company pursuant to the provisions below. The duration of each such Interest Period shall be one, two, three or six months, as the Company may, upon notice received by the Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(i) the Company may not select any Interest Period that ends after the Termination Date;

(ii) Interest Periods commencing on the same date for Eurodollar Rate Loans comprising part of the same Borrowing shall be of the same duration;

(iii) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided, however, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(iv) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

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<sup>7</sup>To refer to applicable intercreditor agreement

“Investment” in any Person means any loan or advance to such Person, any purchase or other acquisition of any equity interests or Debt or the assets comprising a division or business unit or a substantial part or all of the business of such Person, any capital contribution to such Person or any other direct or indirect investment in such Person, including, without limitation, any acquisition by way of a merger or consolidation (or similar transaction) and any arrangement pursuant to which the investor incurs Debt of the types referred to in clause (h) or (i) of the definition of “Debt” in respect of such Person.

“IP License” means any lease, license or covenant not to sue, entered into with respect to any Intellectual Property outside the ordinary course of business; provided, that any exclusive license of Intellectual Property (except for an exclusive license of Intellectual Property in the ophthalmological field) shall be deemed to be outside the ordinary course of business.

“IP Settlement Agreement” means any agreement entered into by the Company or any its Subsidiaries with any other Person (other than a Subsidiary of the Company) relating to any assets included in the Digital Imaging Patent Portfolio (but not involving the sale of such assets) and pursuant to which such other Person shall agree to provide consideration (including, without limitation, pursuant to an IP License) to the Company or such Subsidiary in exchange for the settlement of, or agreement not to pursue, litigation with respect to such assets.

“Junior Loan” has the meaning specified in Section 2.01(b).

“Junior Loan Lender” means, at any time, a Lender with an outstanding Junior Loan at such time.

“Kodak Limited” means Kodak Limited, a company with limited liability organized under the laws of England and Wales.

“Lead Lenders” means the Lead Lenders party to the Commitment Letter (as amended, supplemented, or otherwise modified from time to time) (and their Affiliates, other than portfolio companies), dated as of December 13, 2012, between such Lead Lenders and the Company; provided that any Lead Lender shall cease to be a Lead Lender at such time as it no longer holds Loans and may not subsequently become a Lead Lender if, following such date, it holds Loans.

“Lender” means a First Lien Lender and/or a Junior Loan Lender, as the context may require, and shall include each Person that shall become a party hereto pursuant to Section 9.08.

“Lender Insolvency Event” means that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) such Lender or its Parent Company is the subject of a bankruptcy, insolvency, reorganization, liquidation, winding up or similar proceeding, or a receiver, interim receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment.

“Lien” means any lien, security interest, hypothecation, hypothec or other charge or encumbrance of any kind on the property of a Person, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property, provided the term “Lien” shall not include any license of intellectual property. Solely for the avoidance of doubt, the filing of a UCC financing statement that is a precautionary filing in respect of an

operating lease that does not constitute a security interest in the leased property or otherwise give rise to a security interest does not constitute a Lien solely on account of being filed in a public office.

“Loan Documents” means (i) this Agreement, (ii) the Notes, (iii) Collateral Documents, and (iv) the Intercreditor Agreement, in each case as amended, restated, supplemented or otherwise modified from time to time.

“Loan Parties” means the Company and the Guarantors.

“Loans” means the First Lien Loans and/or the Junior Loans, as the context may require.

“Mandatory Principal Redemption Amount” means, as of each AHYDO Redemption Date the portion of a Loan required to be redeemed to prevent such Loan from being treated as an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code.

“Material Adverse Effect” means an event or occurrence that has had a material adverse effect, or any event or occurrence which could reasonably be expected to have a material adverse effect, on (A) the business, properties, financial condition, results of operations or liabilities of the Company and its Subsidiaries, taken as a whole, other than any change, event or occurrence, arising individually or in the aggregate, from (i) events leading up to the commencement of proceedings under Chapter 11 of the Bankruptcy Code or (ii) events that would reasonably be expected to result from the filing or commencement of the Cases or the announcement of the filing or commencement of the Chapter 11 Cases, or (iii) actions required to be taken under the terms of the Loan Documents, (B) the ability of the Company or the Guarantors to perform their respective obligations under the Loan Documents or (C) the ability of the Agent and/or the Lenders to enforce their rights and remedies under the Loan Documents.

“Material CFCs” means each CFC that, for the most recently completed fiscal quarter for the Company, either (i) has, together with its Subsidiaries, assets that exceed 2% of the total assets shown on the Consolidated statement of financial condition of the Company as of the last day of such period or (ii) has, together with its Subsidiaries, net sales that exceed 2% of the Consolidated net sales of the Company for such period.

“Material Real Property” means each real property owned in fee by a Loan Party that has a fair market value (as determined by the Company in good faith) of not less than \$[25,000,000].

“Material Subsidiary” means each Subsidiary of the Company that, for the most recently completed fiscal year of the Company for which audited financial statements are available, either

(i) has, together with its Subsidiaries, assets that exceed 5% of the total assets shown on the Consolidated statement of financial condition of the Company as of the last day of such period or

(ii) has, together with its Subsidiaries, net sales that exceed 5% of the Consolidated net sales of the Company for such period.

“Maturity Date” means [ ] 30, 2018.<sup>8</sup>

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<sup>8</sup> To be 5 years after the Effective Date for the Reorganization Plan

“Maximum Obligations Amount” has the meaning specified in the Intercreditor Agreement.

“Maximum Rate” has the meaning specified in Section 2.06(g).

“Minimum Proceeds Amount” has the meaning previously identified in writing to the Lead Lenders and the Agent.

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

“Mortgages” shall mean the mortgages or deeds of trust or other similar instruments as applicable, delivered pursuant to Section 3.01(c)(vii) or 5.01(j), as amended, supplemented or otherwise modified from time to time, with respect to Material Real Property, each in form and substance reasonably satisfactory to the Agent.

“Multiemployer Plan” means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

“Multiple Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and at least one Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

“Net Cash Proceeds” means, with respect to any Disposition or IP License by the Company or any of its Subsidiaries or Casualty Event affecting the Company or any of its Subsidiaries, in each case, after the Conversion Date, the aggregate amount of cash actually received from time to time (whether as initial consideration or through payment or disposition of deferred consideration, and if received in a currency other than Dollars, determined after the conversion of such cash into Dollars using the prevailing exchange rate in effect on the date such local currency cash is received) by or on behalf of such Person in connection with such transaction or Casualty Event, in each case, after deducting therefrom only (without duplication) (a) reasonable and customary brokerage commissions, underwriting fees and discounts, legal and accounting fees and expenses, filing fees, finder’s fees, success fees and any other similar fees and commissions and other expenses related to the transaction, (b) the amount of taxes payable in connection with or as a result of such transaction or (c) the amount of any Debt (other than the Debt under the Revolving Facility) secured by a Lien on such asset that, by the terms of the agreement or instrument governing such Debt, is required to be repaid upon such disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash (or, in the case of taxes, within twelve months of the time of receipt of such cash), actually paid to a Person that is not an Affiliate of the Company and are properly attributable to such transaction or to the asset that is the subject thereof; provided that, with respect to Net Cash Proceeds of Casualty Events, if no Event of Default is continuing at such time and the Company shall have delivered a certificate of a Responsible Officer of the Company to the Agent promptly following receipt of such Net Cash Proceeds setting forth the Company’s intention to use all or any portion of such Net Cash Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business or otherwise invest in the business (including investments in research and development) of the Company and its Subsidiaries, in each case within nine months of such receipt (and provided that, if the assets subject to the loss, damage, destruction, condemnation, sale, transfer or other disposition constituted Collateral, the assets to be acquired shall constitute Collateral), such portion of such proceeds shall not constitute Net Cash Proceeds except to the

extent (1) not so used within such nine-month period or (2) not contracted to be so used within such nine-month period and not thereafter so used within twelve months of such receipt; provided further that with respect to Net Cash Proceeds of any Disposition or IP License only, if no Event of Default is continuing at such time, the Company may use all or any portion of such Net Cash Proceeds to acquire, maintain, develop, construct, improve, upgrade or repair assets useful in the business or otherwise invest in the business (including investments in research and development) of the Company and its Subsidiaries and such portion of such Net Cash Proceeds shall not constitute Net Cash Proceeds except to the extent (i) such Net Cash Proceeds are not contracted to be so used within 180 days of receipt of such Net Cash Proceeds, (ii) such Net Cash Proceeds are not so used within 365 days of receipt of such Net Cash Proceeds or (iii) the aggregate Net Cash Proceeds excluded pursuant to this proviso that would have otherwise been required to be applied to make a mandatory prepayment pursuant to Section 2.08(b) in any fiscal year exceeds \$50,000,000 or in the aggregate \$100,000,000.

“Non-U.S. Subsidiary” means any direct or indirect Subsidiary of the Company that is not a U.S. Subsidiary.

“Note” means a promissory note of the Company payable to the order of any Lender, delivered pursuant to a request made under Section 2.14 in substantially the form of Exhibit A hereto, as applicable, evidencing the aggregate indebtedness of the Company to such Lender resulting from the Loans made by such Lender.

“Obligations” means all liabilities and obligations of every nature of each Loan Party from time to time owed to the Agent, the Lenders, the other Secured Parties or any of them, under the Loan Documents relating to the Facilities, whether for principal, interest, fees, expenses, indemnification or otherwise and whether primary, secondary, direct, indirect, contingent, fixed or otherwise.

“Optional Prepayment Premium” means (i) prior to the first anniversary of the Conversion Date, an amount equal to 2% of the aggregate principal amount of any Loans prepaid pursuant to Section 2.08(a), (ii) on and after the first anniversary of the Conversion Date, but prior to the second anniversary of the Conversion Date, an amount equal to 1% of the aggregate principal amount of any Loans prepaid pursuant to Section 2.08(a) and (iii) on or after the second anniversary of the Conversion Date, an amount equal to 0% of the aggregate principal amount of any Loans prepaid pursuant to Section 2.08(a).

“Other Existing Letters of Credit” means the letters of credit set forth on Schedule 1.01(b).

“Other Taxes” has the meaning specified in Section 2.12(b).

“Parent Company” means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially of record, directly or indirectly, a majority of the shares of such Lender.

“Participant Register” has the meaning specified in Section 9.08(i).

“PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

“PBGC” means the Pension Benefit Guaranty Corporation (or any successor).

“Permitted Liens” means such of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for taxes, assessments, utility charges and governmental charges or levies that are not yet due or that are being contested in good faith by appropriate proceedings; provided that, adequate reserves are maintained on the books of the Company or its Subsidiaries, as the case may be, in conformity with GAAP; (b) Liens imposed by law, including, materialmen’s, mechanics’, carriers’, workmen’s and repairmen’s Liens and other similar Liens arising in the ordinary course of business; (c) pledges or deposits to secure obligations under workers’ compensation laws or similar legislation or to secure public or statutory obligations or to secure the performance of bids, performance bonds, tenders, trade contracts or leases (other than leases constituting Debt) in the ordinary course of business; (d) Liens on the applicable real property related to or in connection with the Harrow Sale; (e) easements, rights of way and other encumbrances on title to real property that do not render title to the property encumbered thereby unmarketable, were not incurred in connection with and do not secure Debt and do not materially adversely affect the use of such property for its present purposes; (f) minor survey exceptions and matters as to real property which would be disclosed by an accurate survey of such real property and do not materially adversely affect the use of such property for its present purposes; and (g) Liens or other conveyances of property in favor of any governmental department, agency or instrumentality to secure partial, progress or advance or other payments (other than in respect of borrowed money) pursuant to any contract or statute.

“Permitted Refinancing” means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension of any Debt of such Person; provided that (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Debt so modified, refinanced, refunded, renewed, replaced, exchanged or extended except by an amount equal to accrued and unpaid interest and a reasonable premium thereon plus other reasonable and customary amounts paid, and customary fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, replacement, exchange or extension and by an amount equal to any existing commitments unutilized thereunder; (b) such modification, refinancing, refunding, renewal, replacement, exchange or extension (i) has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity, equal to or greater than the Weighted Average Life to Maturity of, the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended and (ii) has no scheduled amortization or payments of principal prior to 181 days after the Maturity Date or, if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is subject to scheduled amortization or payments of principal, prior to any such scheduled amortization or payments of principal; (c) if the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement, exchange or extension is subordinated in right of payment to the Obligations on terms as favorable in all material respects to the Lenders as those contained in the documentation governing the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended; (d) the terms and conditions (including, if applicable, as to collateral) of any such modified, refinanced, refunded, renewed, replaced, exchanged or extended Debt are, (A) either (i) customary for similar debt securities in light of then-prevailing market conditions or (ii) not materially less favorable to the Loan Parties or the Lenders, taken as a whole, than the terms and conditions of the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended and (B) when taken as a whole (other than interest rate and redemption premiums), not more restrictive to the Company and its Subsidiaries than those set forth in this Agreement (provided that a certificate of a Responsible Officer of the Company delivered to the Agent in good faith at least five Business Days prior to the incurrence of such Debt, together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that the Company has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (d), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Agent provides notice to the Company of

its objection during such five Business Day period); (e) any such modification, refinancing, refunding, renewal, replacement, exchange or extension is incurred by the Person who is the obligor or guarantor, or a successor to the obligor or guarantor, on the Debt being modified, refinanced, refunded, renewed, replaced or extended; and (f) at the time thereof, no Event of Default shall have occurred and be continuing.

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited or unlimited liability company or other entity, or a government or any political subdivision or agency thereof.

“Petition Date” has the meaning specified in the Introductory Statement.

“Plan” means a Single Employer Plan or a Multiple Employer Plan.

“Proceeds Amount” means \$5,000,000.

“Register” has the meaning specified in Section 9.08(e).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents, trustees, partners and advisors of such Person and such Person’s Affiliates.

“Reorganization Plan” has the meaning specified in the recitals hereof.

“Replacement Lender” has the meaning specified in Section 2.17.

“Required First Lien Lenders” means at any time First Lien Lenders holding a majority in interests of the aggregate unpaid principal amount of the First Lien Loans outstanding at such time; provided, however, that if any First Lien Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required First Lien Lenders at such time the aggregate principal amount of the Loans owing to such First Lien Lender (in its capacity as a First Lien Lender).

“Required Junior Loan Lenders” means at any time Junior Loan Lenders holding a majority in interests of the aggregate unpaid principal amount of the Junior Loans outstanding at such time; provided, however, that if any time Junior Loan Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Junior Loan Lenders at such time the aggregate principal amount of the Loans owing to such Junior Loan Lender (in its capacity as a Junior Loan Lender).

“Required Lead Lenders” means Lead Lenders holding in the aggregate more than 50% of the Loans held by all Lead Lenders on the date approval is given; provided that if there are no Lead Lenders, any item requiring Lead Lenders approval shall require no approval and shall be at the option of the Company unless otherwise indicated in this Agreement; provided, further, that if at any time any Lead Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Lead Lenders at such time the aggregate principal amount of the Loans owing to such Lead Lender (in its capacity as a Lead Lender) and outstanding at such time.

“Required Lenders” means at any time Lenders holding at least a majority in interest of the aggregate unpaid principal amount of the Loans outstanding at such time; provided, however, that if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of



Required Lenders at such time the aggregate principal amount of the Loans owing to such Lender (in its capacity as a Lender) and outstanding at such time.

“Responsible Officer” means the chief executive officer, president, chief financial officer, secretary, assistant secretary, treasurer, assistant treasurer or controller of a Loan Party (or for purposes of Section 5.01(h)(xiv), the Company or any of its Subsidiaries). Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Revolving Credit Agreement” means the credit agreement, dated as of [\_\_\_\_], 2013 among [ ], and any amendments, supplements, modifications, extensions, replacements, renewals, restatements, refundings or refinancings thereof in accordance with the terms of this Agreement and any Interecreditor Agreement.

“Revolving Credit Facility” means the revolving credit facility provided under the Revolving Credit Agreement.

“Revolving Credit Facility Collateral” means “Revolving Credit Facility Collateral” as defined in the Interecreditor Agreement.

“S&P” means Standard & Poor’s, a division of The McGraw-Hill Companies, Inc.

“Second Lien Debt” means (a) the 2018 Notes outstanding on the Petition Date and (b) the 2019 Notes outstanding on the Petition Date, in each case together with accrued and unpaid interest thereon.

“Secured Leverage Ratio” means, on any date, the ratio of (a) Secured Debt as of such date to (b) Adjusted EBITDA for the applicable period of four consecutive fiscal quarters of the Company.

“Secured Agreements” means (a) all agreements and other documents relating to any treasury management services, clearing, corporate credit card and related services provided to the Company or any of its Subsidiaries and entered into by the Company or any of its Subsidiaries with any lender under the Revolving Credit Agreement or any of its Affiliates (regardless of whether such lender subsequently ceases to be a lender under the Revolving Credit Agreement for any reason), (b) all letters of credit issued by a lender under the Revolving Credit Agreement or any of its Affiliates (regardless of whether such lender subsequently ceases to be a lender under the Revolving Credit Agreement for any reason) for the benefit of the Company or any of its Subsidiaries, (c) all agreements evidencing any other obligations of the Company and any of its Subsidiaries owing to any lender under the Revolving Credit Agreement and its Affiliates, (d) all Hedge Agreements entered into with the Company or any of its Subsidiaries by any lender under the Revolving Credit Agreement or any of its Affiliates (regardless of whether such lender subsequently ceases to be a lender under the Revolving Credit Agreement for any reason) and (e) each agreement or instrument delivered by any Loan Party or Subsidiary of the Company pursuant to any of the foregoing, as the same may be amended from time to time in accordance with the provisions thereof and of this Agreement, in the case of each of the foregoing described in clauses (a) through (e), to the extent permitted under this Agreement and, subject to the Interecreditor Agreement, including without limitation, the Maximum Obligations Amount.

“Secured Debt” means, on any date, the aggregate principal amount of funded Debt for borrowed money of the Company and its Subsidiaries outstanding at such date that consists of, without duplication, Debt that is then secured by Liens on property or assets of the Company and its Subsidiaries (other than (i) property or assets held in defeasance or similar trust arrangement for the benefit of the Debt secured thereby or (ii) any Debt owing by the Company or its Subsidiaries to the Company or its Subsidiaries); provided that any amounts outstanding pursuant to the Revolving Credit Agreement (including letters of credit issued thereunder or guarantees in respect thereof) shall not be deemed to be Secured Debt.

“Secured Parties” means, collectively, the Agent, and each Lender.

“Security Agreement” means the Security Agreement, dated as of the date hereof, from the Loan Parties party thereto, as grantors, to the Agent, in substantially the form of Exhibit D, as may be amended, amended and restated, supplemented or otherwise modified from time to time.

“Single Employer Plan” means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and no Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

“Solvent” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Collateral” has the meaning specified in the Security Agreement.

“Specified Sale” means the Disposition of all or a portion of the assets of the Company assigned the code names “Rockford” and “Walden”.

“Subsidiary” of any Person means any corporation, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding capital stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such limited liability company, partnership or joint venture or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries.

“Taxes” has the meaning specified in Section 2.12(a).

“Termination Date” means the earliest of (a) the Maturity Date and (b) the acceleration of the Loans in accordance with the provisions hereof.

“Type” refers to the distinction between Loans bearing interest at the Base Rate and Loans bearing interest at the Eurodollar Rate.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UK Pensions Regulator” means the Pensions Regulator established in the United Kingdom pursuant to the Pensions Act of 2004.

“UK Pension Scheme” means the retirement benefits scheme known as the Kodak Pension Plan.

“UK Pension Settlement Agreement” means [•]<sup>9</sup>.

“United States” and “U.S.” mean the United States of America.

“U.S. Liquidity” means, on any date of determination, the sum of the aggregate amount of cash and Cash Equivalents owned by the Loan Parties free and clear of all Liens (other than Liens created under the Collateral Documents and Liens securing the Revolving Credit Facility) on such date plus (B) Excess Availability (as defined in and as calculated under the Revolving Credit Agreement<sup>10</sup>) on such date.

“U.S. Subsidiary” means any direct or indirect Subsidiary of the Company organized under the laws of the United States, any state thereof or the District of Columbia.

“Voting Stock” means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

“Weighted Average Life to Maturity” means, when applied to any Debt at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Debt.

“Withdrawal Liability” has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

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<sup>9</sup> To be reasonably satisfactory to the Required Lead Lenders.

<sup>10</sup> Definition to match definition in Revolving Credit Agreement as of the date hereof

“Worldwide Cash” means, on any date of determination, the sum of the aggregate amount of unrestricted cash and Cash Equivalents owned by the Company and each of its Subsidiaries.

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”.

SECTION 1.03. Accounting Terms. (a) All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America consistent with those applied in the preparation of the financial statements referred to in Section 4.01(e) (“GAAP”). If at any time any change in GAAP or the application thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Agent and the Company shall negotiate in good faith to amend such ratio or requirement (an “Accounting Change”) to preserve the original intent thereof in light of such change in GAAP or the application thereof; provided that, until so amended, (i) such ratio or requirement shall be made as if such Accounting Change had not been effected and on a basis consistent with how GAAP or the rules promulgated pursuant thereto that are the subject of such Accounting Change were calculated in the most recent financial statements delivered by the Company to the Lenders as to which no such objection shall have been made and (ii) the Company shall provide to the Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP or the application thereof.

(b) Unless otherwise provided herein, the Secured Leverage Ratio and Cash Interest Coverage Ratio as of any date shall be calculated on a pro forma basis (other than for the Specified Sale), after giving effect to any acquisition or disposition of assets, or any incurrence, payment, refinancing, restructuring or retirement of Debt, in each case which occurred during the most recently completed period of four consecutive fiscal quarters for which financial statements have been delivered pursuant to 5.01(h)(ii) or (iii), as though each such transaction had occurred at the beginning of such period, including, without duplication, giving effect to all pro forma adjustments permitted or required by Article 11 of Regulation S X under the Securities Act of 1933, as amended; provided that all such adjustments shall be set forth in a reasonably detailed certificate of the chief financial officer of the Company) using, for purposes of making such calculations, the historical financial statements of the Company and its Subsidiaries which shall be reformulated as if such transaction, and any other such transactions that have been consummated during the period, had been consummated on the first day of such period. Whenever pro forma effect is to be given to a transaction, the pro forma calculations shall be made in good faith by chief financial officer of the Company. If any Debt bears a floating rate of interest and is being given pro forma effect, the interest on such Debt shall be calculated as if the rate in effect on the calculation date had been the applicable rate for the entire period (taking into account any Hedge Agreements applicable to such Debt). Interest on a capital lease obligation shall be deemed to accrue at an interest rate reasonably determined by the chief financial officer of the Company to be the rate of interest implicit in such capital lease obligation in accordance with GAAP. For purposes of making a pro forma computation hereunder, interest on any Debt under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Debt during the applicable period. Interest on Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Company may designate.

For purposes of determining Conversion Adjusted EBITDA and Conversion Secured Leverage Ratio, this Section 1.03(b) shall not be applicable.<sup>11</sup>

SECTION 1.04. Permitted Liens. Any reference in any of the Loan Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

SECTION 1.05. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The term “including” is by way of example and not limitation (i.e., “including” shall be deemed to mean “including, without limitation”).

(b) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

## ARTICLE II

### AMOUNTS AND TERMS OF THE LOANS

#### SECTION 2.01. The Loans.

(a) First Lien Loans. Subject to the terms and conditions set forth herein each First Lien Lender agrees, severally and not jointly, that the outstanding First Lien Last Out Loans (as defined in the Existing DIP Term Loan Agreement) immediately prior to giving effect to this Agreement in an amount equal to the amount set forth opposite such First Lien Lender’s name on Schedule 2.01(a) hereto are hereby exchanged for First Lien Loans and deemed borrowed hereunder (the “**First Lien Loans**”).

(b) Junior Loans. Subject to the terms and conditions set forth herein each Junior Loan Lender agrees, severally and not jointly, that the outstanding Junior Loans (as defined in the Existing DIP Term Loan Agreement) immediately prior to giving effect to this Agreement in an amount equal to the amount set forth opposite such Junior Loan Lender’s name on Schedule 2.01(b) hereto are hereby exchanged for Junior Loans and deemed borrowed hereunder (the “**Junior Loans**”).

(c) Amounts deemed borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed.

#### SECTION 2.02. Making the Loans.

(a) All Loans being exchanged shall be deemed borrowed on the Conversion Date as of the same type and with a continuation of the existing Interest Period. No breakage costs will be incurred as a result of the exchange and the continuation.

(b) Anything in this Agreement above to the contrary notwithstanding, (i) the Company may not select Eurodollar Rate Loans for any Borrowing if the aggregate amount of such Borrowing is less than \$10,000,000 or if the obligation of the Lenders to make Eurodollar Rate Loans

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<sup>11</sup> Stranded costs will be calculated in the same manner as in the Existing DIP Term Loan Agreement.

shall then be suspended pursuant to Section 2.06 or 2.10 and (ii) the Eurodollar Rate Loans may not be outstanding as part of more than eight separate Borrowings.

SECTION 2.03. Fees. The Company shall pay to the Agent the fees set forth in the Fee Letter (the "Fee Letter") dated as [ ] between the Agent and the Company.

SECTION 2.04. Repayment of Loans. The Company shall repay to the Agent for the ratable account of each applicable Lender on the Termination Date the aggregate principal amount of the Loans made (or deemed made) by such Lender to the Company then outstanding.

SECTION 2.05. Interest on Loans. (a) Scheduled Interest. The Company shall pay interest on the unpaid principal amount of each Loan owing by such Company to the Agent for the account of each applicable Lender from the date of such Loan until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Loans. During such periods as such Loan is a Base Rate Loan, a rate per annum equal at all times to the sum of (x) the Base Rate in effect from time to time plus (y) the Applicable Margin, payable in arrears on the last Business Day of each of March, June, September and December during such periods and on the date such Base Rate Loan shall be Converted or paid in full.

(ii) Eurodollar Rate Loans. During such periods as such Loan is a Eurodollar Rate Loan, a rate per annum equal at all times during each Interest Period for such Loan to the sum of (x) the Eurodollar Rate for such Interest Period for such Loan plus (y) the Applicable Margin, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on the day of every third month during such Interest Period corresponding to the first day of such Interest Period and on the date such Eurodollar Rate Loan shall be Converted or paid in full.

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default, the Agent may, and upon the request of the Required Lenders shall, require and notify the Company to pay interest ("Default Interest") on (i) the unpaid principal amount of each Loan owing to each Lender, payable in arrears on the dates referred to in clause (a)(i) or (a)(ii) above, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Loan pursuant to clause (a)(i) or (a)(ii) above and (ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder in respect of the Loans of any Class that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Base Rate Loans of such Class pursuant to clause (a)(i) above, provided, however, that following acceleration of the Loans of any Class pursuant to Section 6.01, Default Interest on the Loans of any Class shall accrue and be payable hereunder whether or not previously required by the Agent.

SECTION 2.06. Interest Rate Determination. (a) The Agent shall give prompt notice to the Company and the applicable Lenders of the applicable interest rates determined by the Agent for purposes of each clause of Section 2.05(a).

(b) If, with respect to any Eurodollar Rate Loans of any Class, Lenders owed at least 50% of the then aggregate principal amount thereof notify the Agent that the Eurodollar Rate for any Interest Period for such Loans will not adequately reflect the cost to such Lenders of making, funding or maintaining their respective Eurodollar Rate Loans for such Interest Period, the Agent shall forthwith so

notify the Company and the applicable Lenders, whereupon (i) each Eurodollar Rate Loan of such Class will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Loan of such Class, and (ii) the obligation of the applicable Lenders to make, or to Convert Loans of such Class into, Eurodollar Rate Loans of such Class shall be suspended until the Agent shall notify the Company and such Lenders that the circumstances causing such suspension no longer exist.

(c) If the Company shall fail to select the duration of any Interest Period for any Eurodollar Rate Loans in accordance with the provisions contained in the definition of “Interest Period” in Section 1.01, the Agent will forthwith so notify the Company and the Appropriate Lenders and such Loans will automatically, on the last day of the then existing Interest Period therefor, Convert into Base Rate Loans.

(d) Upon the occurrence and during the continuance of any Event of Default (i) each applicable Eurodollar Rate Loan will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Loan and (ii) the obligation of the applicable Lenders to make, or to Convert Loans into, Eurodollar Rate Loans shall be suspended.

(e) If Agent is unable to determine the Eurodollar Rate for any Eurodollar Rate Loans,

(i) the Agent shall forthwith notify the Company and the Lenders that the interest rate cannot be determined for such Eurodollar Rate Loans,

(ii) with respect to Eurodollar Rate Loans, each such Loan will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Loan, and

(iii) the obligation of the Lenders to make Eurodollar Rate Loans or to Convert Base Rate Loans into Eurodollar Rate Loans shall be suspended until the Agent shall notify the Company and the Lenders that the circumstances causing such suspension no longer exist.

(f) All interest payments to be made hereunder shall be paid without allowance or deduction for reinvestment or otherwise, before and after maturity, default and judgment. The rates of interest specified in this Agreement are intended to be nominal rates and not effective rates. Interest calculated hereunder shall be calculated using the nominal rate method and not the effective rate method of calculation.

(g) Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the “Maximum Rate”). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the applicable Loans or, if it exceeds such unpaid principal, refunded to the Company, as applicable. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 2.07. Optional Conversion of Loans. The Company may on any Business Day, upon notice given to the Agent not later than 11:00 A.M. (New York City time) on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Sections 2.06 and 2.10, Convert all or any portion of the Loans made to it of one Type comprising the same Borrowing into Loans of the other Type; provided, however, that any Conversion of Eurodollar Rate Loans into Base Rate Loans shall be made only on the last day of an Interest Period for such Eurodollar Rate Loans, any Conversion of Base Rate Loans into Eurodollar Rate Loans shall be in an amount not less than the minimum amount specified in Section 2.02(b), no Conversion of any Loans shall result in more separate Borrowings than permitted under Section 2.02(b) and each Conversion of Loans comprising part of the same Borrowing shall be made ratably among the applicable Lenders in accordance with the outstanding Loans of the applicable Lenders. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Loans to be Converted, and (iii) if such Conversion is into Eurodollar Rate Loans, the duration of the initial Interest Period for each such Loan. Each notice of Conversion shall be irrevocable and binding on the Company.

SECTION 2.08. Prepayments of Loans. (a) Optional. The Company may, upon notice at least three Business Days' prior to the date of such prepayment, in the case of Eurodollar Rate Loans, and not later than 11:00 A.M. (New York City time) on the Business Day prior to such prepayment, in the case of Base Rate Loans, to the Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Company shall, prepay the outstanding principal amount of the Loans of a Class comprising part of the same Borrowing made to it in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid, plus the Optional Prepayment Premium; provided, however, that (x) each partial prepayment of the Loans of such Class shall be in an aggregate principal amount of \$10,000,000, or an integral multiple of \$5,000,000 in excess thereof and (y) in the event of any such prepayment of a Eurodollar Rate Loan, the Company shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 9.04(c), provided further that no voluntary prepayment of the Junior Loans may be made until the First Lien Loans and other Obligations in respect thereof (other than contingent indemnification obligations not yet due and payable) have been paid in full in cash.

(b) Mandatory.

(i) Subject in all respects to the prepayment and cash collateralization requirements under the Revolving Credit Agreement, and to the extent actually applied thereunder, to the extent not applied pursuant to the Revolving Credit Agreement with respect to Revolving Credit Facility Collateral, within three (3) Business Days of the receipt by the Company or any of its Subsidiaries of Net Cash Proceeds from Asset Sales or Casualty Events (other than the Specified Sale) when aggregated with all such Net Cash Proceeds received prior to that time and not otherwise applied is equal to or greater than Proceeds Amount, the Company shall apply all such Net Cash Proceeds to prepay the Loans in the manner set forth in Section 2.08(b)(iv). After such application, the Net Cash Proceeds shall reset to zero upon the making of a mandatory prepayment pursuant to this Section 2.08(b)(i).

(ii) Subject to Section 2.08(b)(vi), within three (3) Business Days after day of receipt by the Company or any of its Subsidiaries of the Net Cash Proceeds from the Specified Sale, the Company shall apply an amount equal to the Applicable Prepayment Percentage of such Net Cash Proceeds (if any) to prepay the Loans in the manner set forth in Section 2.08(b)(iv).

(iii) Beginning with the Excess Cash Flow Period ending on December 31, 2014, the Company shall calculate Excess Cash Flow for such Excess Cash Flow Period no



later than six months after the end of such Excess Cash Flow Period (such date, the “**Excess Cash Flow Calculation Date**”) and deliver a certificate signed by a Responsible Officer setting forth the amount, if any, of Excess Cash Flow for such Excess Cash Flow Period and the calculation thereof in reasonable detail. If the Worldwide Cash as of the last day of the applicable Excess Cash Flow Period exceeds \$800,000,000 (the “**Excess Cash Trigger Amount**”), the Company shall apply an amount equal to 50% of Excess Cash Flow above the Excess Cash Trigger Amount to prepay the Loans no later than 45 days following the Excess Cash Flow Calculation Date in the manner set forth in Section 2.08(b)(iv); provided that no prepayment shall be required pursuant to this Section 2.08(iii) to the extent that such prepayment would cause (a) Worldwide Cash to be less than the Excess Cash Trigger Amount or (b) U.S. Minimum Liquidity to be less than \$100,000,000.

(iv) Each prepayment of principal pursuant to this Section 2.08(b) shall be applied in the following order: (x) first, to the ratable prepayment of the First Lien Loans until all such Loans have been prepaid in full, and second to the ratable prepayment of the Junior Loans until all such Loans have been prepaid in full and (y) first to outstanding Base Rate Loans of each applicable Class up to the full amount thereof, and second to outstanding Eurodollar Rate Loans of each applicable Class up to the full amount thereof. Each prepayment made pursuant to this Section 2.08(b) shall be made together with any interest accrued to the date of such prepayment on the principal amounts prepaid and, in the case of any prepayment of a Eurodollar Rate Loan on a date other than the last day of an Interest Period or at its maturity, any additional amounts which the Company shall be obligated to reimburse to the Lenders in respect thereof pursuant to Section 9.04(c).

(v) The Agent shall give prompt notice of any prepayment required under this Section 2.08(b) to Lenders.

(vi) Notwithstanding any other provisions of this Section 2.08(b), (A) with respect only to any Asset Sale, IP License or Casualty Event described in Section 2.08(b)(i), to the extent that applicable law would effectively (1) prohibit or delay the repatriation to the United States of America of any Net Cash Proceeds received by any Subsidiary that is not a U.S. Subsidiary or (2) impose material adverse tax or legal consequences on the Company and its Subsidiaries if such Net Cash Proceeds were so repatriated, in each case as determined by the Company in good faith, the portion of such Net Cash Proceeds so affected shall be disregarded for purposes of determining the amount of any mandatory prepayment required to be made under this Section 2.08(b) so long, but only for so long, as applicable local law would prohibit such repatriation (the Company hereby agreeing to promptly take or to cause the applicable Subsidiary to promptly take (as the case may be) all actions required by the applicable local law to permit such repatriation) or impose such material adverse tax consequences, and at such time as such repatriation of any such Net Cash Proceeds becomes permitted under the applicable local law and/or such material adverse tax consequences would no longer exist (and in any event within three Business Days thereafter) (and whether or not any of such Net Cash Proceeds are actually repatriated), the Company shall prepay the Loans in accordance with Section 2.08(b)(iii), and (B) with respect only to any Excess Cash Flow prepayment described in Section 2.08(b)(iii), to the extent that applicable law would effectively prohibit or delay the repatriation to the United States of America of any proceeds received by any Subsidiary that is not a U.S. Subsidiary or result in material adverse tax consequences, as determined by the Company in good faith, the proceeds so affected shall be disregarded for purposes of determining the amount of any mandatory prepayment required to be made under Section 2.08(b) so long, but only for so long, as applicable local law would prohibit such repatriation (the Company hereby agreeing to promptly take or to cause the applicable

Subsidiary to promptly take (as the case may be) all actions required by the applicable local law to permit such repatriation), and at such time as such repatriation of any such proceeds becomes permitted under the applicable local law (and in any event within three Business Days thereafter) (and whether or not any of such proceeds are actually repatriated), the Company shall prepay the Loans in accordance with Section 2.08(b)(iv).

(vii) Any Net Cash Proceeds not required to be applied to the prepayment of Loans pursuant to this Section 2.08 shall be available to the Company and its Subsidiaries to use for their general corporate purposes.

(viii) If any of the Loans would otherwise constitute an “applicable high yield discount obligation” within the meaning of Section 163(i)(1) of the Code, at the end of any “accrual period” (as defined in Section 1272(a)(5) of the Code) ending after the fifth anniversary of the date of the Existing DIP Term Loan Agreement (each, an “AHYDO Redemption Date”), the Company shall be required to redeem for cash a portion of each such Loan then outstanding equal to the Mandatory Principal Redemption Amount (each such redemption, a “Mandatory Principal Redemption”). The redemption price for the portion of each Loan thus redeemed shall be 100% of the principal amount of such portion plus any accrued interest thereon on the date of redemption. No partial redemption or repurchase of the Loans prior to any AHYDO Redemption Date pursuant to any other provision of this Agreement will alter the Company’s obligation to make any Mandatory Principal Redemption with respect to any Loans that remain outstanding on such AHYDO Redemption Date. The ordering rule in Section 2.08(b)(iv) shall not apply to redemptions required pursuant to this Section 2.08(b)(viii).

**SECTION 2.09. Increased Costs.** (a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other governmental authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining Eurodollar Rate Loans (or, in the case of any change in or in the interpretation of any law or regulations with respect to taxes, any Loans) (excluding for purposes of this Section 2.09 any such increased costs resulting from (x) Taxes, Excluded Taxes or Other Taxes (as to which Section 2.12 shall govern) and (y) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Lender is organized or has its Applicable Lending Office or any political subdivision thereof), then the Company shall from time to time, upon demand by such Lender (with a copy of such demand to the Agent), pay such Lender additional amounts sufficient to compensate such Lender for such increased cost; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such a designation would avoid the need for, or reduce the amount of, such increased cost and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost, submitted to the Company and the Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “change in law”, regardless of the date enacted, adopted or issued.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other governmental authority (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital is increased by or based upon the existence of such Lender's commitment to lend hereunder and other commitments of such type, then, upon demand by such Lender (with a copy of such demand to the Agent), the Company shall pay such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital to be allocable to the existence of such Lender's commitment to lend hereunder. A certificate as to such amounts submitted to the Company and the Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.10. Illegality. Notwithstanding any other provision of this Agreement, if any Lender shall notify the Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other governmental authority asserts that it is unlawful, for any Lender or its Eurodollar Lending Office to perform its obligations hereunder to make Eurodollar Rate Loans or to fund or maintain Eurodollar Rate Loans hereunder, (a) each Eurodollar Rate Loan will automatically, upon such demand, Convert into a Base Rate Loan and (b) the obligation of the Lenders to make, or to Convert Loans into, Eurodollar Rate Loans shall be suspended until the Agent shall notify the Company and the Lenders that the circumstances causing such suspension no longer exist; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Eurodollar Lending Office if the making of such a designation would allow such Lender or its Eurodollar Lending Office to continue to perform its obligations to make Eurodollar Rate Loans or to continue to fund or maintain Eurodollar Rate Loans and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

SECTION 2.11. Payments and Computations. (a) The Company shall make each payment hereunder without condition or deduction for any right of counterclaim, defense, recoupment or set-off, not later than 11:00 A.M. (New York City time) on the day when due in Dollars to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal, interest, fees or commissions ratably (other than amounts payable pursuant to Section 2.03, 2.09, 2.12 or 9.04(c)) to the applicable Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 9.08(c), from and after the effective date specified in such Assignment and Acceptance, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) The Company hereby authorizes each Lender, if and to the extent payment owed to such Lender is not made when due hereunder or under the Note held by such Lender, to charge from time to time against any or all of the Company's accounts with such Lender any amount so due.

(c) All computations of interest and of fees shall be made by the Agent on the basis of a year of 360 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 or fees or commissions are payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fee, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Loans to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(e) Unless the Agent shall have received notice from the Company prior to the date on which any payment is due to the Lenders hereunder that the Company will not make such payment in full, the Agent may assume that the Company has made such payment in full to the Agent on such date and the 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 the Company shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Rate.

(f) Subject to Section 6.02 and to the Intercreditor Agreement, if the Agent receives funds for application to the Obligations of the Company under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify, or the Company does not direct the manner in which such funds are to be applied, the Agent may, but shall not be obligated to, elect to distribute such funds first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and second, toward payment of principal, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

SECTION 2.12. Taxes. (a) Any and all payments by or on account of any obligation of any Loan Party to or for the account of any Lender or the Agent hereunder or under the Notes shall be made, in accordance with Section 2.11 or the applicable provisions of such other documents, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, remittances, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender and the Agent (i) taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction under the laws of which such Lender or the Agent (as the case may be) is organized or in which its principal executive office is located, or any political subdivision thereof and, in the case of each Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction of such Lender's Applicable Lending Office or any political subdivision thereof, and (ii) any U.S. federal withholding taxes imposed under FATCA that would not have been imposed but for the failure of the Agent or Lender, as applicable, to satisfy the applicable requirements of FATCA (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Notes being hereinafter referred to as "Taxes" and all such excluded taxes being referred to as "Excluded Taxes"). If any Loan Party or the Agent shall be required by law to deduct, remit or withhold any Taxes from or in respect of any sum payable hereunder or under any Note to any Lender or the Agent, (i) the sum payable by the applicable Loan Party shall be increased as may be necessary so that after all required deductions, remittances or withholdings are made (including deductions applicable to additional sums payable under this Section 2.12), such Lender or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party or the Agent shall make such deductions and (iii) such Loan Party or the Agent shall pay the full amount deducted, remitted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, each Loan Party shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made by such Loan Party hereunder or under any other Loan Documents or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the other Loan Documents (hereinafter referred to as “Other Taxes”).

(c) The Loan Parties shall indemnify each Lender and the Agent for and hold it harmless against the full amount of Taxes or Other Taxes (including, without limitation, taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.12) imposed on or paid or remitted by such Lender or the Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within 30 days from the date such Lender or the Agent (as the case may be) makes written demand therefor with appropriate supporting documentation.

(d) Within 30 days after the date of any payment of Taxes, the appropriate Loan Party shall furnish to the Agent, at its address referred to in Section 9.02, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent. In the case of any payment hereunder or under the Notes or any other documents to be delivered hereunder by or on behalf of a Loan Party through an account or branch outside the United States or by or on behalf of a Loan Party by a payor that is not a United States person, if such Loan Party determines that no Taxes are payable in respect thereof, such Loan Party shall furnish, or shall cause such payor to furnish, to the Agent, at such address, an opinion of counsel reasonably acceptable to the Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms “United States” and “United States person” shall have the meanings specified in Section 7701 of the Code.

(e) Each Lender or Agent organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement, on or prior to the designation of any different Applicable Lending Office, on the date of the Assignment and Acceptance pursuant to which it becomes a Lender in the case of each Lender that becomes a party hereto pursuant to Section 9.08, on the date such Agent is appointed pursuant to Section 8.07 in the case of a successor Agent, and from time to time thereafter as reasonably requested in writing by the Company or the Agent (but only so long as such Lender or the Agent remains lawfully able to do so), shall provide each of the Agent and the Company with two original Internal Revenue Service Forms W-8BEN or (in the case of a Lender or the Agent that is claiming (A) an exemption from, or reduction in the rates of, United States federal withholding tax under an applicable income tax treaty or (B) an exemption from United States federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest” and, in the case of this clause (B), that has certified in writing to the Agent and the Company that it is not (i) a “bank” as defined in Section 881(c)(3)(A) of the Code), (ii) a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of any Loan Party or (iii) a controlled foreign corporation related to any Loan Party (within the meaning of Section 864(d)(4) of the Code (a “Compliance Certificate”)) or Internal Revenue Service Forms W-8ECI, Internal Revenue Service Forms W-8IMY, accompanied by Internal Revenue Service Forms W-8ECI, W-8BEN (together with a withholding statement and Compliance Certificates, as appropriate), W-9, and/or other certification documents from each beneficial owner, as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender or the Agent is exempt from or entitled to a reduced rate of United States withholding tax on payments pursuant to this Agreement or any other Loan Document or Internal Revenue Service Forms W-8BEN certifying that such Lender or the Agent is a foreign corporation, partnership, estate or trust. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered Excluded Taxes unless and until such Lender

provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered Excluded Taxes for periods governed by such form; provided, however, that, if at the date of the Assignment and Acceptance pursuant to which a Lender assignee becomes a party to this Agreement, the Lender assignor was entitled to payments under subsection (a) in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to the Lender assignee on such date. If a payment made to a Lender hereunder or under the Notes would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Company and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Company or the Agent as may be necessary for the Company and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.12(e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. If any form or document referred to in this subsection (e) (other than FATCA documentation) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the Conversion Date by Internal Revenue Service Form W-8BEN or W-8ECI or the related certificate described above, that the Lender reasonably considers to be confidential, the Lender shall give notice thereof to the Company and shall not be obligated to include in such form or document such confidential information, except directly to a governmental authority or other Person subject to a reasonable confidentiality agreement. In addition, upon the written request of the Company or the Agent, each Lender or the Agent shall provide any other certification, identification, information, documentation or other reporting requirement if (i) delivery thereof is required by a change in the law, regulation, administrative practice or any applicable tax treaty as a precondition to exemption from or a reduction in the rate of deduction or withholding; (ii) the Agent or Lender, as the case may be, is legally entitled to make delivery of such item; and (iii) delivery of such item will not result in material additional costs unless the Company shall have agreed in writing to indemnify Lender or the Agent for such costs.

(f) For any period with respect to which a Lender has failed to provide the Company with the appropriate form, certificate or other document described in Section 2.12(e) (other than if such failure is due to a change in law, or in the interpretation or application thereof, occurring subsequent to the date on which a form, certificate or other document originally was required to be provided, or if such form, certificate or other document otherwise is not required under subsection (e) above), taxes imposed by the United States of America by reason of such failure shall be treated as Excluded Taxes; provided, however, that should a Lender become subject to taxes because of its failure to deliver a form, certificate or other document required hereunder, the Loan Parties, at such Lender's expense, shall take such steps as the Lender shall reasonably request to assist the Lender to recover such taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.12 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

(h) If any Lender or the Agent determines, in its sole discretion, that it has actually and finally realized, by reason of a refund, deduction or credit of any Taxes paid or reimbursed by a Loan Party pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other

Loan Documents, a current monetary benefit that it would otherwise not have obtained, and that would result in the total payments under this Section 2.12 exceeding the amount needed to make such Lender or the Agent whole, such Lender or the Agent, as the case may be, shall pay to the applicable Loan Party, with reasonable promptness following the date on which it actually realizes such benefit, an amount equal to the lesser of the amount of such benefit or the amount of such excess, in each case net of all out-of-pocket expenses in securing such refund, deduction or credit; provided, that the Company, upon the request of the Agent or such Lender, agree to repay the amount paid (with interest and penalties) over to any Loan Party to the Agent or such Lender in the event the Agent or such Lender is required to repay such amount to such governmental authority.

(i) If any Loan Party determines in good faith that a reasonable basis exists for contesting the applicability of any Tax or Other Tax, the Agent or the relevant Lender shall cooperate with such Loan Party, upon the request and at the expense of such Loan Party, in challenging such Tax or Other Tax. Nothing in this Section 2.12(i) or in Section 2.12(h) shall require the Agent or any Lender to disclose the contents of its tax returns or other confidential information to any Person.

(j) Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Taxes or Other Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Taxes and Other Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any taxes attributable to such Lender's failure to comply with the provisions of Section 9.08(i) relating to the maintenance of a Participant Register and (iii) any taxes excluded from the definition of "Taxes" attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this Section 2.12(j). For the avoidance of doubt, except as otherwise provided in Sections 2.12(a), 2.12(b) and 2.12(c), nothing in this Section 2.12(j) shall result in any increase in the liability of any Loan Party to any Lender or the Agent for Taxes or Other Taxes.

**SECTION 2.13. Sharing of Payments, Etc.** Without expanding the rights of any Lender under this Agreement, if any Appropriate Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Loans owing to it (other than pursuant to Section 2.09, 2.12 or 9.04(c)) in excess of its ratable share (according to the proportion of (i) the amount of such Loans due and payable to such Lender at such time to (ii) the aggregate amount of the Loans due and payable at such time to all Appropriate Lenders hereunder) of payments on account of the Loans obtained by all the Appropriate Lenders, such Lender shall forthwith purchase from the other Appropriate Lenders such participations in the Loans owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Appropriate Lender shall be rescinded and such Appropriate Lender shall repay to the purchasing Lender the purchase price to the extent of such Appropriate Lender's ratable share (according to the proportion of (i) the purchase price paid to such Lender to (ii) the aggregate purchase price paid to all Appropriate Lenders) of such recovery together with an amount equal to such Appropriate Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered; provided further that, so long as the applicable Loans shall not have become due and payable pursuant to Section 6.01, any excess payment received by any Appropriate Lender shall be shared on a pro rata basis only with other

Appropriate Lenders. The Company agrees that any Appropriate Lender so purchasing a participation from another Appropriate Lender pursuant to this Section 2.13 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Loan Parties in the amount of such participation; provided further that each Lender shall only purchase participations in Loans under the Facilities with respect to which they hold an outstanding Loan.

SECTION 2.14. Evidence of Debt. (a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Company to such Lender resulting from each Loan owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of the Loans. The Company agrees that upon notice by any Lender to the Company (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Loans owing to, or to be made by, such Lender, the Company shall promptly execute and deliver to such Lender a Note, as applicable, properly completed, payable to such Lender and its registered assigns in an amount equal to the outstanding principal amount of the Loans of such Lender.

(b) The Register maintained by the Agent pursuant to Section 9.08(e) shall include (i) the date and amount of each Borrowing made hereunder, the Type of Loans comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assignment and Acceptance delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Company to each Lender hereunder and (iv) the amount of any sum received by the Agent from the Company hereunder and each Lender's share thereof.

(c) Entries made in good faith by each Lender in its account or accounts pursuant to subsection (a) above, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Company to such Lender under this Agreement, absent manifest error; provided, however, that the failure of such Lender to make an entry, or any finding that an entry is incorrect, in such account or accounts shall not limit or otherwise affect the obligations of the Company under this Agreement with respect to Loans made and not repaid.

SECTION 2.15. Use of Proceeds. The proceeds of the Loans shall be deemed used for general corporate purposes and to fund working capital requirements of the Company.

SECTION 2.16. Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that (i) any Lender shall become a Defaulting Lender and (ii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days after the Company's request that it cure such default, the Company shall have the right (but not the obligation) to repay such Defaulting Lender in an amount equal to the principal of, and all accrued interest on, all outstanding Loans owing to such Lender, together with all other amounts due and payable to such Lender under the Loan Documents.

SECTION 2.17. Replacement of Certain Lenders. In the event a Lender ("Affected Lender") shall have (a) become a Defaulting Lender hereunder, (b) requested compensation from the Company under Section 2.12 with respect to Taxes or Other Taxes or with respect to increased costs or capital or under Section 2.09 or other additional costs incurred by such Lender which, in any case, are not being incurred generally by the other Lenders, (c) has not agreed to any consent, waiver or amendment that requires the agreement of all Lenders or all affected Lenders in accordance with the terms of Section 9.01 and as to which the Required Lenders have agreed, or (d) delivered a notice pursuant to Section 2.10 claiming that such Lender is unable to extend Eurodollar Rate Loans for reasons not generally applicable



to the other Lenders, then, in any case, the Company or the Agent may make written demand on such Affected Lender (with a copy to the Agent in the case of a demand by the Company and a copy to the Company in the case of a demand by the Agent) for the Affected Lender to assign at par, and such Affected Lender shall use commercially reasonable efforts to assign pursuant to one or more duly executed Assignments and Acceptances five Business Days after the date of such demand, to one or more financial institutions that comply with the provisions of Section 9.08 which the Company or the Agent, as the case may be, shall have engaged for such purpose (“Replacement Lender”), all of such Affected Lender’s rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all Loans owing to it) in accordance with Section 9.08. The Agent is authorized to execute one or more of such Assignments and Acceptances as attorney-in-fact for any Affected Lender failing to execute and deliver the same within 5 Business Days after the date of such demand. Further, with respect to such assignment, the Affected Lender shall have concurrently received, in cash, all amounts due and owing to the Affected Lender hereunder or under any other Loan Document; provided that upon such Affected Lender’s replacement, such Affected Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12 and 9.04, as well as to any fees accrued for its account hereunder and not yet paid, and shall continue to be obligated under Section 8.05 with respect to losses, obligations, liabilities, damages, penalties, actions, judgments, costs, expenses or disbursements for matters which occurred prior to the date the Affected Lender is replaced.

SECTION 2.18. [Reserved]

SECTION 2.19. [Reserved]

SECTION 2.20. Effect of Conversion to Exit Facility. (a) Upon this Agreement becoming effective pursuant to Section 3.1, from and after the Conversion Date: (i) all First Lien Last Out Loans (as defined in the Existing DIP Term Loan Agreement) shall be deemed to be exchanged for First Lien Loans hereunder; (ii) all Junior Loans (as defined in the Existing DIP Term Loan Agreement) shall be deemed to be exchanged for Junior Loans hereunder.

(b) Notwithstanding anything herein to the contrary but subject to the following proviso, the Company may refinance all or a portion of the Junior Loans (as defined in the Existing DIP Term Loan Agreement) on or before the Conversion Date with proceeds of Debt that would constitute Permitted Refinancing of the Junior Loans hereunder (“Conversion Junior Loan Refinancing Debt”), and elect to have the First Lien Last Out Loans (as defined in the Existing DIP Term Loan Agreement) deemed to be First Lien Loans hereunder and any Junior Loans (as defined in the Existing DIP Term Loan Agreement) not so refinanced to be Junior Loans hereunder; provided that, notwithstanding anything to the contrary in the foregoing, (i) such Conversion Junior Loan Refinancing Debt shall have the same obligors, guarantors and collateral as the Junior Loans hereunder, (ii) the priority of the Lien securing the Conversion Junior Loan Refinancing Debt may be pari passu or junior to the Lien securing the Junior Loans, (iii) the payment waterfall provisions with respect to such Conversion Loan Junior Refinancing shall be no less favorable to the First Lien Lenders than those set forth in the Loan Documents, including, without limitation, Sections 2.08 and 6.02 and (iv) such Conversion Junior Loan Refinancing Debt shall have no covenants or events of default that are more restrictive, taken as a whole, than the covenants or events of default set forth in this Agreement.

SECTION 2.21. Certain Pledges of Stock. Notwithstanding anything to the contrary herein or in the Collateral Documents, not more than 65% of the voting equity interests of any CFC shall be pledged in favor of any Lender or the Agent and no pledge of equity interests of any Subsidiary of a CFC shall be required.

## ARTICLE III

### CONDITIONS TO EFFECTIVENESS AND LENDING

SECTION 3.01. Conditions Precedent. The effectiveness of this Agreement is subject to the satisfaction (or waiver in accordance with Section 9.01) of the following conditions precedent:

(a) The Agent shall have received the following, each dated as of the Conversion Date (unless otherwise specified) and in form and substance reasonably satisfactory to the Agent:

(i) An opinion of the general counsel of the Company covering customary matters for a transaction of this type and in form and substance reasonably satisfactory to the Agent.

(ii) An opinion of Sullivan & Cromwell LLP, U.S. counsel for the Loan Parties covering customary matters for a transaction of this type and in form and substance reasonably satisfactory to the Agent.

(iii) An opinion of Day Pitney LLP, special New Jersey counsel for the Company covering customary matters for a transaction of this type and in form and substance reasonably satisfactory to the Agent.

(b) Evidence that, other than those items that have been delivered or completed prior to the Conversion Date and those that according to Schedule 3.01(b) are scheduled to be delivered or completed after the Conversion Date, such other documents, instruments or actions deemed necessary or advisable by the Agent to perfect and protect the Liens and security interests (and the priority thereof) created or purported to be created pursuant to the DIP Order have been completed or filed for the Closing, including the filing of proper financing statements and the payment of any fees or taxes required in connection with the filing of such documents, instruments or financing statements.

(c) Since [\_\_\_\_\_] <sup>12</sup>, there shall have been no Material Adverse Effect.

(d) The Company shall have paid to the extent invoiced at least two Business Day prior to the Conversion Date all fees and expenses of the Agent, [Blackstone], as financial advisor to the Lead Lenders, and [Akin Gump], as legal counsel to the Lead Lenders, and [counsel] to the Agent accrued and payable on or prior to the Conversion Date.

(e) The representations and warranties of the Company and each Loan Party contained in each Loan Document to which it is a party shall be correct in all material respects (except to the extent qualified by materiality, "Material Adverse Effect" or like qualification, in which case such representations and warranties shall be true and correct in all respects) on and as of the Conversion Date, before and after giving effect to the effectiveness of this Agreement and the transactions contemplated hereby, as though made on and as of such date.

(f) On the Conversion Date, U.S. Liquidity shall not be less than \$150,000,000.

(g) On the Conversion Date, the Conversion Secured Leverage Ratio shall not exceed 4.00:1.00.

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<sup>12</sup> Date of the approval by the Bankruptcy Court of the disclosure statement for the Reorganization Plan.

(h) The CI Adjusted EBITDA for the Company and its Subsidiaries for the six month period ending on the most recently ended calendar month ending [15] days or more prior to the Conversion Date shall not be less than the amounts previously set forth in the side letter referenced in the Commitment Letter, dated as of December 13, 2012, among the Lead Lenders and the Company.

(i) The Bankruptcy Court shall have entered an order (the “*Confirmation Order*”), (x) which order (i) shall have confirmed the Reorganization Plan and, (ii) shall have authorized the Facilities and (y) such Confirmation Order shall be in full force and effect and shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended in any respect without the written consent of the Required Lenders.

(j) The Effective Date shall have occurred no later than September 30, 2013.

(k) No Default or Event of Default (as defined in the Existing DIP Term Loan Agreement) exists under the Existing DIP Term Loan Agreement immediately prior to the termination thereof and after giving effect to the deemed extensions of credit on the Conversion Date, no Default or Event of Default has occurred and is continuing or would result therefrom.

(l) The Specified Sale shall have been consummated for an aggregate gross cash purchase price (for the U.S. and non-U.S. portions of the applicable business taken together ) at consummation of not less than the Minimum Proceeds Amount.

(m) The First Lien First Out Loans (as defined in the Existing DIP Term Loan Agreement) shall have been repaid in full in cash (with proceeds of the Specified Sale or otherwise) and all commitments relating thereto shall have been terminated and all Liens and security interest related thereto shall have been terminated and released.

(n) The UK Pension Settlement Agreement shall be in full force and effect.

SECTION 3.02. Determinations Under this Agreement. For purposes of determining compliance with the conditions specified in this Agreement, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the date that the Company, by notice to the Lenders, designates as the proposed Conversion Date, specifying its objection thereto. The Agent shall promptly notify the Lenders of the occurrence of the Conversion Date.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Company. The Company represents and warrants as follows:

(a) Each Loan Party is duly organized, validly existing and, to the extent such concept is applicable, in good standing under the laws of the jurisdiction of its organization.

(b) The execution, delivery and performance by each Loan Party of each Loan Document to which it is or is to be party, and the consummation of the transactions contemplated hereby and thereby, are within such Loan Party’s corporate powers, have been duly authorized by all necessary

corporate action, and do not (i) contravene such Loan Party's charter or by-laws, (ii) violate any law, rule, regulation (including, without limitation, with respect to the Company, Regulation X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award, (iii) conflict with or result in the breach of, or constitute a default or require any payment to be made under, any material contractual restriction or, to such Loan Party's knowledge, any other contractual restriction, binding on or affecting such Loan Party or (iv) except for the Liens created under the Loan Documents, result in or require the creation or imposition of any Lien upon or with respect to any of the properties of any Loan Party or any of its Subsidiaries.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or any other third party is required for (i) the due execution, delivery, recordation, filing or performance by any Loan Party of any Loan Document to which it is or is to be a party, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (iii) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof provided for in this Agreement and in the Intercreditor Agreement) or (iv) except for any notices that may be required pursuant to Section 6.01 or Section 6.02 or pursuant to the Intercreditor Agreement, the exercise by the Agent, or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents.

(d) This Agreement has been, and each other Loan Document when delivered hereunder will have been, duly executed and delivered by each Loan Party party thereto. This Agreement is, and each other Loan Document when delivered hereunder will be, the legal, valid and binding obligation of each Loan Party party thereto enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be affected by general principles of equity, whether enforcement is sought in a proceeding in equity or at law.

(e) The audited Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as at December 31, 2012, and the related audited Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the fiscal year then ended, accompanied by an opinion of PricewaterhouseCoopers LLP, independent public accountants, copies of which have been furnished to each Lender, fairly present, the Consolidated financial condition of the Company and its Consolidated Subsidiaries as at such date and the Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the period ended on such date, all in accordance with generally accepted accounting principles consistently applied. The unaudited Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as at [\_\_\_\_\_, 2013], and the related unaudited Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the [\_\_\_-month] period then ended, fairly present, the Consolidated financial condition of the Company and its Consolidated Subsidiaries as at such date and the Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the period ended on such date, all in accordance with generally accepted accounting principles consistently applied, subject to normal year-end adjustments and other items, such as footnotes, omitted in interim statements. Since [\_\_\_\_\_] <sup>13</sup>, there has been no Material Adverse Effect.

(f) There is no pending or, to the knowledge of the Company, threatened action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting the Company or any of its Subsidiaries before any court, governmental agency or arbitrator that (i) is reasonably likely to have a Material Adverse Effect, other than the Cases and as disclosed on Schedule

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<sup>13</sup> Date of the approval by the Bankruptcy Court of the disclosure statement for the Reorganization Plan.

4.01(f) or publicly filed or furnished prior to the Conversion Date on form 8-K or any periodic report required or permitted to be filed or furnished under the Exchange Act with the Securities Exchange Commission; or (ii) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby.

(g) The Company is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(h) The Company is not an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended.

(i) The Company and each of its Subsidiaries owns, or has the valid and enforceable right to use, all trademarks, service marks, trade names, domain names, goodwill associated with the foregoing, patents, copyrights, trade secrets and know-how (including all registrations and applications for registration of the foregoing) (collectively, “Intellectual Property”) necessary for the conduct of its business as currently conducted except where the failure to so own or license could not reasonably be expected to have a Material Adverse Effect. Except as disclosed on Schedule 4.01(f), no claim has been asserted and is pending, or to the knowledge of the Company, threatened, by any Person challenging the use of any such Intellectual Property by the Company or any Subsidiary or the validity or enforceability of any such Intellectual Property or alleging that the conduct of the business of the Company or any of its Subsidiaries infringes, misappropriates or otherwise violates the Intellectual Property rights of any other Person, nor does the Company know of any valid basis for any such claim, except, in each case, for such claims that, individually or in the aggregate, are not reasonably expected to have a Material Adverse Effect. Except as disclosed on Schedule 4.01(f), to the knowledge of the Company, neither the use of such Intellectual Property by the Company or any of its Subsidiaries, nor the conduct of their respective businesses, infringes, misappropriates or otherwise violates the rights of any Person, except for such claims, infringements, misappropriations or violations that, individually or in the aggregate, are not reasonably expected to have a Material Adverse Effect.

(j) (i) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan that has resulted in or that could reasonably be expected to have a Material Adverse Effect.

(ii) Neither any Loan Party nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan that in the aggregate could reasonably be expected to have a Material Adverse Effect.

(iii) Neither any Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization, insolvent or has been terminated, within the meaning of Title IV of ERISA, or has been determined to be in “endangered” or “critical” status within the meaning of Section 432 of the Code or Section 305 of ERISA, and no such Multiemployer Plan is reasonably expected to be in reorganization, insolvent or to be terminated, within the meaning of Title IV of ERISA or in endangered or critical status.

(iv) Except as would not reasonably be expected to have a Material Adverse Effect, no event comprising (A) the commencement of winding up of the UK Pension Scheme, except pursuant to the UK Pension Settlement Agreement, (B) the cessation of participation in the UK Pension Scheme by any Affiliate of the Company, except pursuant to the UK Pension Settlement Agreement, or (C) the issue of a warning notice by the UK Pensions

Regulator that it is considering issuing a financial support direction or contribution notice in relation to the UK Pension Scheme, has occurred, and (to the knowledge of the Company or Kodak Limited) the UK Pensions Regulator has not stated any intention to do so.

(v) No Loan Party nor any Affiliate of any Loan Party has incurred any liability to the UK Pension Scheme as a result of ceasing to participate in the UK Pension Scheme and (to the knowledge of the Company or Kodak Limited) no Affiliate of any Loan Party has stated any intention to cease to participate in the UK Pension Scheme, except pursuant to the UK Pension Settlement Agreement.

(vi) No Loan Party nor any Affiliate of any Loan Party has been notified by the Trustees of the UK Pension Scheme that the UK Pension Scheme is being wound up and (to the knowledge of the Company or Kodak Limited) the Trustees of the UK Pension Scheme have not stated any intention to do so, except pursuant to the UK Pension Settlement Agreement.

(vii) Except as would not reasonably be expected to have a Material Adverse Effect or, except pursuant to the UK Pension Settlement Agreement, the UK Pension Schemes are duly registered for HMRC tax purposes, all material obligations of each Affiliate required to be performed in connection with the UK Pension Schemes and any funding agreements therefor have been performed in a timely fashion; and there are no material outstanding disputes involving any Affiliates concerning the UK Pension Schemes.

(k) Except as could not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect, (i) the Company and its Subsidiaries has filed all Federal income tax returns and all other tax returns, domestic and foreign, required to be filed by it and has paid all taxes and assessments payable by them that have become due and payable and (ii) with respect to the Company and its Subsidiaries, there are no claims being asserted in writing with respect to any taxes.

(l) Except to the extent the Company or such Subsidiary has set aside on its books adequate reserves (A) the operations and properties of the Company and each of its Consolidated Subsidiaries comply with all applicable Environmental Laws and Environmental Permits, except as could not reasonably be expected to have a Material Adverse Effect, (B) all past non-compliance with such Environmental Laws and Environmental Permits has been or is reasonably expected to be resolved without ongoing obligations or costs that have had or are reasonably expected to have a Material Adverse Effect and (C) no circumstances exist that are reasonably likely to (i) form the basis of an Environmental Action against the Company or any of its Subsidiaries or any of their properties that is reasonably expected to have a Material Adverse Effect or (ii) cause any such property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law that is reasonably expected to have a Material Adverse Effect.

(m) The Company and each of its Subsidiaries has good and marketable fee simple title to or valid leasehold interests in all of the real property owned or leased by the Company or such Subsidiary and good title to all of their personal property, except where the failure to hold such title or leasehold interests, individually or in the aggregate is not reasonably expected to have a Material Adverse Effect. The Company and its Subsidiaries enjoy peaceful and undisturbed possession under all of their respective leases except where the failure to enjoy such peaceful and undisturbed possession, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect. As of the Conversion Date, each Material Real Property is set forth on Schedule 4.01(m).

(n) All factual information, taken as a whole, furnished by or on behalf of the Company and its Subsidiaries, taken as a whole, in writing to the Agent or any Lender on or prior to the Conversion Date, for purposes of this Agreement and all other such factual information taken as a whole, furnished by the Company on behalf of itself and its Subsidiaries, taken as a whole, in writing to the Agent or any Lender pursuant to the terms of this Agreement will be, true and accurate in all material respects on the date as of which such information is dated or furnished and not incomplete by knowingly omitting to state any material fact necessary to make such information, taken as a whole, not materially misleading at such time, provided, however, that with respect to any projected financial information or forward-looking statements, the Company represents only that such information was prepared in good faith based upon assumptions, and subject to such qualifications, believed to be reasonable at the time made.

(o) (i) All filings and other actions necessary to perfect and protect the security interest in the Collateral created (or to be created) under the Collateral Documents to ensure that such security interest remains in full force and effect have been taken, (ii) the Collateral Documents, when executed and delivered (and at all times thereafter), create in favor of the Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected security interest in the Collateral having the priority set forth in the Security Agreement and the Intercreditor Agreement, securing the payment of the Obligations, and (iii) except to the extent that a longer period within which to take such actions has been provided for pursuant to the paragraph following Section 3.01(c)(vii) (and only to such extent), all filings and other actions necessary to perfect and protect such security interest have been duly taken. The Loan Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the liens and security interests created or permitted under the Loan Documents.

(p) (i) Set forth on Part A of Schedule II hereto is a complete and accurate list of all direct and indirect Subsidiaries of the Company that are organized under the laws of a state of the United States of America, and (ii) set forth on Part B of Schedule II hereto is a complete and accurate list of all direct Material Subsidiaries of the Company, showing, in each case, as of the Conversion Date (as to each such Subsidiary) the jurisdiction of its formation, the number of shares, membership interests or partnership interests (as applicable) of each class of its equity interests authorized, and the number outstanding, on the Conversion Date and the percentage of each such class of its Equity Interests owned (directly or indirectly) by the applicable Loan Party and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Conversion Date. All of the outstanding equity interests in each Loan Party's Subsidiaries have been validly issued, are fully paid and non-assessable and, except as otherwise provided herein, are owned by such Loan Party or one or more of its Subsidiaries, other than director's qualifying shares or similar minority interests required under the laws of the Subsidiary's formation, free and clear of all Liens, except (x) those created under the Collateral Documents, and (y) those securing the Revolving Credit Facility.

(q) Schedule 4.01(q) sets forth all Deposit Accounts other than Excluded Accounts maintained by the Loan Parties in the United States or Canada, including, with respect to each depository (i) the name and address of such depository, (ii) the account number(s) maintained with such depository and (iii) a contact person at such depository.

(r) Schedule 4.01(r) sets forth all Material CFCs as of the Conversion Date.

(s) As of the Conversion Date and after giving effect to the effectiveness of the Plan, the Company, individually and together with its Subsidiaries, is Solvent.

## ARTICLE V

### COVENANTS OF THE COMPANY

SECTION 5.01. Affirmative Covenants. So long as any Loan or any other payment obligation of any Loan Party of which the Company has knowledge under any Loan Document shall remain unpaid, the Company will:

(a) Compliance with Laws. Comply, and cause each of its Subsidiaries to comply, with all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA, Environmental Laws and the PATRIOT Act, except where such non-compliance is not reasonably expected to have a Material Adverse Effect.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all material lawful claims that, if unpaid, might by law become a Lien upon its property; provided, however, that neither the Company nor any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained.

(c) Maintenance of Insurance. (x) Maintain, and cause each of its Subsidiaries to maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company or such Subsidiary operates; provided, however, that the Company and its Subsidiaries may self-insure to the extent consistent with prudent business practice and (y) if any real property owned by a Loan Party is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (or any amendment or successor act thereto), then such Loan Party shall maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount sufficient to comply with all applicable rules and regulations promulgated pursuant to such Act.

(d) Preservation of Corporate Existence. Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company and its Subsidiaries may consummate any amalgamation, merger or consolidation permitted under Section 5.02(b) and provided further that neither the Company nor any of its Subsidiaries shall be required to preserve any right or franchise, or in the case of a Subsidiary, its corporate existence, if the Company determines that the preservation or maintenance thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not reasonably expected to have a Material Adverse Effect.

(e) Visitation Rights. So long as no Event of Default has occurred and is then continuing, on reasonable notice, not more than two times during a fiscal year and during normal business hours, permit the Agent or any of its agents or representatives, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Company and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Company and any of its Subsidiaries with any of their officers or directors and with their independent certified public accountants (“Visitation Rights”), provided that all such information is subject to the provisions of Section 9.09. At any time an Event of Default has occurred and is then continuing, the Agent and Lenders shall have Visitation Rights and shall not be limited in the number of times they may exercise Visitation Rights.



(f) Keeping of Books. Keep and maintain proper books of record and account on a Consolidated basis for Company and its Subsidiaries in conformity with generally accepted accounting principles in effect from time to time.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve in all material respects, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to so maintain or preserve is not reasonably expected to have a Material Adverse Effect.

(h) Reporting Requirements. Furnish to the Lenders:

(i) as soon as available and in any event (A) with respect to any fiscal month of the Company in which a fiscal quarter ends, within 45 days after the end of such fiscal month and (B) within 20 Business Days after the end of any other fiscal month of the Company, in each case, the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such month and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such month;

(ii) as soon as available and in any event within 45 days after the end of each of the first three quarters of each fiscal year of the Company, the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such quarter and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified by the chief financial officer of the Company as having been prepared in accordance with generally accepted accounting principles subject to normal year-end adjustments and other items, such as footnotes, omitted in interim statements;

(iii) as soon as available and in any event within 90 days after the end of such fiscal year of the Company, a copy of the annual audit report for such year for the Company and its Consolidated Subsidiaries, containing the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such fiscal year and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for such fiscal year, in each case accompanied by an opinion by PricewaterhouseCoopers LLP or such another internationally recognized registered independent public accountant;

(iv) concurrently with any delivery of financial statements under Sections 5.01(h)(ii) and (iii), a certificate of a Responsible Officer of the Company (A) certifying that no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (B) setting forth computations in reasonable detail demonstrating compliance with the covenants contained in Section 5.03.

(v) as soon as practicable and in any event within five days after the management of the Company has knowledge of the occurrence of each Default continuing on the date of such statement, a statement of a Responsible Officer of the Company setting forth details of such Default and the action that the Company has taken and/or proposes to take with respect thereto;

(vi) promptly after the sending or filing thereof, copies of all reports that the Company sends to any of its security holders, and copies of all reports and registration statements that the Company or any Subsidiary files with the Securities and Exchange Commission or any national securities exchange;

(vii) notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Company or any of its Subsidiaries of the type which would have been required to be disclosed under Section 4.01(f), promptly after the later of the commencement thereof or knowledge that such actions or proceedings are reasonably likely to be of a type which would have been required to be disclosed under Section 4.01(f);

(viii) no later than 45 days after the end of each fiscal quarter, amended or supplemented Schedules setting forth such information as would be required to make the representations set forth in [Section 6(a), (c), (d), (h), (i), (l) and (p)(iii)] of the Security Agreement true and correct as if the Schedules referenced therein were delivered on such date;

(ix) except to the extent prohibited by the Pensions Act 2004, such other information in respect of the Company or any of its Subsidiaries as any Lenders through the Agent may from time to time reasonably request ;

(x) as soon as available, and in any event no later than 60 days after the end of each fiscal year of the Company, a reasonably detailed consolidated budget for the fiscal year immediately following such fiscal year on a quarterly basis, and on an annual basis for each year thereafter through the Termination Date (including a projected Consolidated balance sheet of the Company and its Subsidiaries as of the end of the following fiscal year), the related projected Consolidated statements of cash flow and income for such fiscal year (collectively, the "Projections"), which Projections shall be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on then reasonable estimates and then available information and assumptions, in each case, at the time made; it being understood that the Projections are made on the basis of the Company's then current good faith views and assumptions believed to be reasonable when made with respect to future events, and assumptions that the Company believes to be reasonable as of the date thereof and further being understood that projections, including the Projections, are subject to significant uncertainties and contingencies, many of which are beyond the Company's control, inherently unreliable and that actual performance may differ materially from the Projections and no assurance is given by the delivery of such Projections or otherwise that the Projections will be realized;

(xi) (A) promptly and in any event within 20 days after any Loan Party or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, a statement of a Responsible Officer of such Loan Party describing such ERISA Event and the action, if any, that such Loan Party or such ERISA Affiliate has taken and proposes to take with respect thereto and (B) on the date any records, documents or other information must be furnished to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA, a copy of such records, documents and information;

(xii) promptly and in any event within two business days after receipt thereof by any Loan Party or any ERISA Affiliate, copies of each notice from the PBGC or other governmental or regulatory authority stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan;

(xiii) promptly and in any event within five business days after receipt thereof by any Loan Party or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of Withdrawal Liability by any such Multiemployer Plan, (B) the reorganization or termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (C) the amount of liability incurred, or that may be incurred, by such Loan Party or any ERISA Affiliate in connection with any event described in clause (A) or (B); and

(xiv) except to the extent prohibited by the Pensions Act 2004, promptly and in any event within 3 Business Days after a Responsible Officer of the Company or Kodak Limited knows or has reason to know that (A) the UK Pension Scheme has commenced winding up, (B) the UK Pensions Regulator has issued a warning notice that it is considering issuing a financial support direction or contribution notice in relation to the UK Pension Scheme or (C) the Company or any of its Affiliates which currently participates in the UK Pension Scheme has ceased to participate and thus triggered a liability on its cessation of participation, a statement of a Responsible Officer of the Company (or, if applicable, cause to be furnished to the Lenders a statement of a Responsible Officer of Kodak Limited) noting such event and the action, if any, which is proposed to be taken with respect thereto.

Documents required to be delivered pursuant to Section 5.01(h)(i), (ii), (iii), (iv) and (vii) (to the extent any such documents are included in materials otherwise filed with the Securities Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 9.02; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that: (A) upon written request of the Agent the Company shall deliver paper copies of such documents to the Agent until a written request to cease delivering paper copies is given by the Agent and (B) the Company shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Agent and maintaining its copies of such documents.

The Company hereby acknowledges that (a) the Agent will make available to the Lenders materials and/or information provided by or on behalf of the Company hereunder (collectively, "Company Materials") by posting the Company Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Company hereby agrees that it will use commercially reasonable efforts to identify that portion of the Company Materials that may be distributed to the Public Lenders and that (w) all such Company Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Company Materials "PUBLIC", the Company shall be deemed to have authorized the Agent and the Lenders to treat such Company Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Company or

its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Company Materials constitute Company Information, they shall be treated as set forth in Section 9.09; (y) all Company Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (z) the Agent shall be entitled to treat any Company Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.” Notwithstanding the foregoing, the Company shall be under no obligation to mark any Company Materials “PUBLIC”.

(i) Covenant to Guarantee Obligations and Give Security. Upon (x) the request of the Agent and following the occurrence and during the continuance of an Event of Default, (y) the formation or acquisition of any Subsidiary organized under the laws of any state of the United States of America owned directly or indirectly by the Company or (z) the acquisition of any property by any Loan Party, and such property, in the reasonable judgment of the Agent (as to which judgment the Agent has given notice to the Company), shall not already be subject (other than in respect of the Specified Collateral) to a perfected security interest in favor of the Agent for the benefit of the Secured Parties with the priorities set forth in this Agreement and the Intercreditor Agreement, then in each case at the Company’s expense:

(i) in connection with the formation or acquisition of a Subsidiary organized under the laws of a state of the United States of America owned directly or indirectly by the Company that (A) is not a CFC or a Subsidiary of a CFC, or (B) is not a Person having total assets of less than \$500,000 (and, so long as it is not such a Person), except that the aggregate total assets of all such persons shall not exceed \$1,250,000, within 30 days after such formation or acquisition, cause each such Subsidiary, to duly execute and deliver to the Agent a guaranty supplement, in the form of Exhibit F hereto, guaranteeing the applicable Guaranteed Obligations,

(ii) within 45 days after (A) such request or acquisition of property by any Loan Party, duly execute and deliver, and cause each Loan Party to duly execute and deliver, to the Agent such additional pledges, assignments, security agreement supplements, intellectual property security agreement supplements and other security agreements as specified by, and in form and substance reasonably satisfactory to, the Required Lenders, securing payment of all the Obligations of such Loan Party and constituting Liens on all such properties and (B) the formation or acquisition by any Loan Party of any Subsidiary, duly execute and deliver and cause each Loan Party acquiring equity interests in such Subsidiary to duly execute and deliver to the Agent pledges, assignments and security agreement supplements related to such equity interests as specified by, and in form and substance reasonably satisfactory to, the Required Lenders, securing payment of all of the Obligations of such Loan Party; provided that (x) the stock of any Subsidiary held by a CFC or a Subsidiary of a CFC shall not be required to be pledged and (y) if such property is equity interests of a CFC, no more than 65% of the voting equity interests in such CFC shall be pledged in favor of the Secured Parties,

(iii) within 60 days after such request, formation or acquisition, take, and cause each Loan Party to take, whatever action (including, without limitation, the filing of UCC financing statements (or similar registrations or filings), the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Required Lenders to vest in the Agent (or in any representative of the Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements delivered pursuant to this Section 5.01(i), enforceable

against all third parties in accordance with their terms (other than in respect of the Specified Collateral as set forth in Section [6(m)] of the Security Agreement),

(iv) within 60 days after such request, formation or acquisition, deliver to the Agent, upon the request of the Agent in its sole discretion, a signed copy of one or more favorable opinions, addressed to the Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Required Lenders as to (A) such guaranties, guaranty supplements, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements described in clauses (i), (ii) and (iii) above being legal, valid and binding obligations of each Loan Party party thereto enforceable in accordance with their terms and as to the matters contained in clause (iii) above, subject to customary exceptions, (B) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such assets, and (C) such other matters as the Agent may reasonably request, consistent with the opinions delivered on the Conversion Date (to the extent applicable).

(v) at any time and from time to time, promptly execute and deliver, and cause each Loan Party and each Subsidiary to execute and deliver, any and all further instruments and documents and take, and cause such Subsidiary to take, all such other action as the Agent or Required Lenders may deem reasonably necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements to the extent required by this Section 5.01(i) and the applicable Collateral Documents.

(j) Further Assurances. (i) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, correct, and cause each of the other Loan Parties promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and

(ii) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, pledge agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Agent, or any Lender through the Agent, may reasonably require from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by applicable law and the terms of this Agreement and the Collateral Documents, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (C) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries formed or acquired after the Conversion Date is or is to be a party, and cause each of its Subsidiaries to do so.

(iii) Promptly notify the Agent of the acquisition of, and, within ninety (90) days (with extensions thereto as agreed by the Company and Agent) after acquisition thereof, grant and cause each of the Loan Parties to grant to the Agent security interests and mortgages in, such Material Real Property as are not covered by the original Mortgages, to the extent

acquired after the Conversion Date, and cause each such Subsidiary to record or file, the additional Mortgage in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Agent required to be granted pursuant to the additional Mortgages. With respect to each such additional Mortgage, the Company shall deliver, or cause the applicable Loan Party to deliver, to the Agent contemporaneously therewith a title insurance policy or policies or marked up unconditional binder of title insurance, paid for by the Company or the applicable Loan Party, issued by a nationally recognized title insurance company insuring the Lien of each such Mortgage as a valid first Lien on the Mortgaged Property (as defined therein), free of any other Liens except (i) as expressly permitted by Section 5.02(a), (ii) Liens arising by operation of law, (iii) any exclusions from coverage set forth in the jacket in the form of lender's policy of title insurance used by such title insurance company and such other exceptions as such title insurance company shall commit to insure over without any additional cost to the Agent, and (iv) local, state and federal laws, ordinances or governmental regulations, together with a survey if reasonably available at no additional out-of-pocket cost or expense to the applicable Loan Party with respect to property outside the United States.

(k) Foreign Security Interests. Within the time periods set forth on Schedule 5.01(k) (or such longer time as may be reasonably agreed by the Agent), execute and deliver, and cause each of its Subsidiaries to execute and deliver, to the Agent all documents and instruments required to create and perfect the Agent's security interest in Collateral consisting of the stock of those Subsidiaries listed on Schedule 5.01(k) in the applicable foreign jurisdictions (free and clear of all other liens, subject to exceptions permitted hereunder), in each case along with a customary opinion of local counsel with respect to such security interest.

(l) Use of Proceeds. Use, and cause its Subsidiaries to use, the proceeds of the Loans solely for the purposes contemplated by Section 2.15.

(m) Post-Closing Covenants. Comply, and cause its Subsidiaries to comply, with the obligations set forth in the paragraph immediately following Section 3.01(c)(ix) and on Schedule 5.01(m).

SECTION 5.02. Negative Covenants. So long as any Loan or any other payment obligation of any Loan Party of which the Company has knowledge under any Loan Document shall remain unpaid, the Company will not:

(a) Liens. Create or suffer to exist, or permit any of its Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, other than the following, provided that any Lien permitted by any clause below shall be permitted under this Section 5.02(a), notwithstanding that such Lien would not be permitted by any other clause:

(i) Permitted Liens,

(ii) Liens created under the Loan Documents,

(iii) (A) Liens arising under leases that have been or should be, in accordance with GAAP, recorded as capital leases and (B) Liens upon or in any real property or equipment acquired or held by the Company or any Subsidiary in the ordinary course of business to secure the purchase price of such property or equipment or to secure Debt incurred solely for the purpose of financing the acquisition or improvement of such property or equipment (including any Liens placed on such property or equipment within 180 days after the

acquisition of such property or equipment), or Liens existing on such property or equipment at the time of its acquisition (other than any such Liens created in contemplation of such acquisition that were not incurred to finance the acquisition of such property) or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided, however, in the case of this Clause 5.02(a)(iii)(B), that no such Lien shall extend to or cover any properties of any character other than the real property or equipment being acquired, and no such extension, renewal or replacement shall extend to or cover any properties not theretofore subject to the Lien being extended, renewed or replaced, provided further that the aggregate principal amount of the Debt secured by the Liens collectively referred to in this clause (iii) outstanding at any time shall not exceed in the aggregate \$15,000,000 during the twelve month period ending on the first anniversary of the Conversion Date, \$30,000,000 during the twelve month period ending on the second anniversary of the Conversion Date, \$45,000,000 during the twelve month period ending on the third anniversary of the Conversion Date and \$60,000,000 during the twelve month period ending on the fourth anniversary of the Conversion Date and thereafter;

(iv) the Liens existing on the Conversion Date and described on Schedule 5.02(a) hereto (except any Liens permitted by Section 5.02(a)(ii)),

(v) Liens on property of a Person existing at the time such Person is acquired by, amalgamated, merged into or consolidated with the Company or any Subsidiary of the Company or becomes a Subsidiary of the Company; provided that such Liens were not created in contemplation of such amalgamation, merger, consolidation or acquisition and do not extend to any assets other than those of the Person so merged or amalgamated into or consolidated with the Company or such Subsidiary or acquired by the Company or such Subsidiary,

(vi) [Reserved],

(vii) Liens on assets of Subsidiaries organized under the laws of any jurisdiction outside of the United States (A) which secure Debt permitted under Section 5.02(d)(viii) or (B) which are incurred to permit such Subsidiaries to preserve their rights in any judicial, quasi-judicial, governmental agency or similar proceeding and which in the case of this clause (B) do not constitute an Event of Default under Section 6.01(f),

(viii) the replacement, extension or renewal of any Lien permitted by clause (iii) above in connection with a Permitted Refinancing of the Debt secured thereby, in each case upon or in the same property theretofore subject thereto,

(ix) Liens on assets of Subsidiaries that are not Loan Parties securing Debt permitted under Section 5.02(d)(ix),

(x) Liens on up to \$1,500,000 of cash collateral securing the obligations of the Company and its Subsidiaries under the Existing Secured Agreements set forth on Part 1 of Schedule 1.01(a),

(xi) Liens in respect of judgments that do not constitute an Event of Default under Section 6.01(f),

(xii) Liens on assets of the Company and its Subsidiaries not constituting Collateral which secure Debt permitted under Section 5.02(d)(xiii),

(xiii) Liens over any assets of any Subsidiary that is not a Loan Party to the extent required to provide collateral in respect of any appeal of any tax litigation in an aggregate amount not to exceed the amount required to be paid under local law to permit such appeal,

(xiv) additional Liens securing obligations not to exceed in the aggregate (i) \$15,000,000 at any time outstanding prior to the second anniversary of the Conversion Date and (ii) \$20,000,000 at any time outstanding thereafter,

(xv) Liens in favor of a Loan Party securing Debt permitted under Section 5.02(d)(i), 5.02(d)(vii) or 5.02(d)(viii); provided, that such Debt also constitutes an Investment permitted under clause (D) of Section 5.02(i)(i) or under Section 5.02(i)(iii),

(xvi) Liens securing the obligations under the Revolving Credit Agreement, subject to, and in accordance with the Intercreditor Agreement, and

(xvii) Liens securing Debt permitted under Section 5.2(d)(xviii).

(b) Mergers. Merge, amalgamate or consolidate with or into any Person, or permit any of its Subsidiaries to do so, provided that, notwithstanding the foregoing (i) any Subsidiary may merge, amalgamate or consolidate with or into the Company or any other Subsidiary of the Company (provided that if any such Person is a Loan Party, the surviving or continuing entity shall be a Loan Party and the security interests granted by such surviving or continuing entity that is a Loan Party pursuant to the Collateral Documents shall remain in full force and effect), (ii) any Subsidiary of the Company that is a Loan Party may merge, amalgamate or consolidate with or into the Company or any other Loan Party (provided that the security interests granted by the Company or such other Loan Party pursuant to the Collateral Documents shall remain in full force and effect), (iii) any Subsidiary of the Company that is not a Loan Party may merge, amalgamate or consolidate with or into the Company or any other Subsidiary of the Company, (iv) any Subsidiary may merge, amalgamate or consolidate with any other Person so long as such Subsidiary is the surviving or continuing corporation (provided that if any such Person is a Loan Party, the surviving or continuing entity shall be a Loan Party and the security interests granted by such surviving or continuing entity pursuant to the Collateral Documents shall remain in full force and effect), (v) the Company may merge, amalgamate or consolidate with any other Person so long as the Company is the surviving corporation and the security interests granted by the Company pursuant to the Collateral Documents shall remain in full force and effect, and (vi) any Subsidiary may merge, amalgamate or consolidate with any other Person the purpose of which is to effect a disposition permitted pursuant to Section 5.02(e)(vii); provided, in each case, that no Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) Accounting Changes. Make or permit, or permit any of its Subsidiaries organized under the laws of the United States or any state thereof to make or permit, any change in accounting policies or reporting practices, except as required or permitted by generally accepted accounting principles.

(d) Debt. Create or suffer to exist, or permit any of its Subsidiaries to create or suffer to exist, any Debt other than the following, provided that any Debt permitted by any clause below shall be permitted under this Section 5.02(d), notwithstanding that such Debt would not be permitted by any other clause:

(i) Debt owed to the Company or to a Consolidated Subsidiary of the Company, provided that all such Debt owed by a Loan Party to a Person that is not a Loan



Party shall be subordinated to the Obligations of such Loan Party pursuant to an intercompany subordination agreement or other arrangements reasonably satisfactory to the Required Lenders; provided further that all such Debt that is owed to a Loan Party by a Person that is not a Loan Party (x) shall be permitted as an Investment under Section 5.02(i) and (y) shall be evidenced by an intercompany note, and pledged to the Agent as Collateral,

(ii) Debt existing on the Conversion Date and described on Schedule 5.02(d) hereto, and any Permitted Refinancing thereof,

(iii) Debt secured by Liens of the type described in and to the extent permitted by Section 5.02(a)(iii) in an aggregate amount outstanding at any time not to exceed in the aggregate \$15,000,000 during the twelve month period ending on the first anniversary of the Conversion Date, \$30,000,000 during the twelve month period ending on the second anniversary of the Conversion Date, \$45,000,000 during the twelve month period ending on the third anniversary of the Conversion Date and \$60,000,000 during the twelve month period ending on the fourth anniversary of the Conversion Date and thereafter,

(iv) Debt of a Person existing at the time such Person is amalgamated, merged into or consolidated with the Company or any Subsidiary of the Company or becomes a Subsidiary of the Company; provided that such Debt was not created in contemplation of such amalgamation, merger, consolidation or acquisition,

(v) Debt arising under the Loan Documents,

(vi) Debt under the Revolving Credit Agreement in connection with an asset based revolving facility (including any letters of credit or other obligations incurred thereunder) in an amount not to exceed \$200,000,000 at any time outstanding,

(vii) Debt incurred by Kodak International Finance Limited, a company organized and existing under the laws of England, (x) in connection with short term working capital needs in an aggregate amount not to exceed \$25,000,000 at any time outstanding and (y) consisting of Hedge Agreement Obligations entered into in the ordinary course of business to protect the Company and its Subsidiaries against fluctuations in commodities, interest or exchanges rates and permitted under Section 5.02(m),

(viii) Debt incurred by Subsidiaries organized under the laws of any jurisdiction outside of the United States in an aggregate amount not to exceed \$60,000,000 at any time outstanding;

(ix) Debt of Subsidiaries that are not Loan Parties in respect of (a) treasury management services, clearing, corporate credit card and related services provided to any such Subsidiaries, (b) letters of credit issued for the benefit of any such Subsidiaries, (c) Hedge Agreements entered into by any such Subsidiaries and permitted under Section 5.02(m), and (d) bank guarantees with respect to such Subsidiaries, in an aggregate amount not to exceed \$10,000,000 at any time outstanding,

(x) endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business,

(xi) Debt which exists or may exist under the Secured Agreements in existence from time to time, subject to the Maximum Obligations Amount,

(xii) Debt which exists or may exist under the Existing Secured Agreements in existence from time to time; provided that such Debt shall not be secured by any Lien other than a Lien permitted under Section 5.02(a)(x).

(xiii) unsecured Debt consisting of guarantees of amounts owing by customers of the Company under equipment and vendor financing programs in an aggregate amount not to exceed at any time outstanding \$55,000,000 during the twelve month period ending on the first anniversary of the Conversion Date, \$60,000,000 during the twelve month period ending on the second anniversary of the Conversion Date, \$65,000,000 during the twelve month period ending on the third anniversary of the Conversion Date, \$70,000,000 during the twelve month period ending on the fourth anniversary of the Conversion Date, \$75,000,000 during the twelve month period ending on the fifth anniversary of the Conversion Date,

(xiv) unsecured Debt in connection with surety bonds, guarantees and letters of credit for customs and excise taxes, value added taxes, insurance and environmental liabilities, rental expenses, tenders and bids and other obligations of the like incurred in the ordinary course of business in an aggregate principal amount not to exceed \$15,000,000 at any time outstanding,

(xv) the Other Existing Letters of Credit, but, with respect to each Other Existing Letter of Credit, only until such time as such letter of credit expires in accordance with its terms in effect on the Conversion Date or is otherwise cancelled or terminated,

(xvi) Guarantees (i) of any Loan Party in respect of Debt of the Company or any other Loan Party otherwise permitted hereunder and (ii) of any Subsidiary that is not a Loan Party in respect of Debt of any other Subsidiary that is not a Loan Party otherwise permitted hereunder,

(xvii) additional Debt not to exceed at any time outstanding \$15,000,000 until the second anniversary of the Conversion Date and \$20,000,000 thereafter, and

(xviii) Conversion Junior Loan Refinancing Debt, to the extent the proceeds thereof are used to refinance the Junior Loans (as defined in the Existing DIP Term Loan Agreement) substantially concurrently with the Conversion Date.

(e) Sales and Other Transactions. Sell, convey, transfer, lease or otherwise dispose of, or permit any of its Subsidiaries to sell, convey, transfer, lease or otherwise dispose of, any assets, other than the following, provided that such action permitted by any clause below shall be permitted under this Section 5.02(e), notwithstanding that such action would not be permitted by any other clause:

(i) sales of Inventory in the ordinary course of its business,

(ii) in a transaction authorized by Section 5.02(b),

(iii) sales of obsolete or worn-out property or property no longer used or useful,

(iv) sales, transfers or other dispositions of assets (x) among the Loan Parties and (y) among Subsidiaries of the Company that are not Loan Parties or from such Subsidiaries to Loan Parties,

- (v) Investments permitted under Section 5.02(i),
- (vi) sales, transfer or other disposition of accounts receivable in the ordinary course of business by foreign subsidiaries,
- (vii) other sales, transfers or other dispositions of assets for fair market value (excluding the Specified Sale), provided, that the Company or any of its Subsidiaries shall receive not less than 75% of the consideration for such sale, transfer or other disposition in the form of cash or Cash Equivalents (in each case, free and clear of all Liens at the time received); provided, that, with respect to Intellectual Property, the value of licenses to the Company or its Subsidiaries (as a licensee) shall be excluded from determining whether 75% of such consideration is in the form of cash or Cash Equivalents,
- (viii) (a) leases of real property located at Eastman Business Park in Rochester, NY and (b) other leases of real property in the ordinary course of business; and
- (ix) the sales, transfers or other dispositions set forth on Schedule 5.02(e).

(f) Payment Restrictions Affecting Subsidiaries. Directly or indirectly, enter into or suffer to exist, or permit any of its Subsidiaries to enter into or suffer to exist, any agreement or arrangement limiting the ability of any of its Subsidiaries to declare or pay dividends or other distributions in respect of its equity interests or repay or prepay any Debt owed to, make loans or advances to, or otherwise transfer assets to or make investments in, the Company or any Subsidiary of the Company (whether through a covenant restricting dividends, loans, asset transfers or investments, a financial covenant or otherwise), except (i) as provided in this Agreement and the Revolving Credit Agreement, (ii) any agreement or instrument evidencing Debt existing on the Conversion Date, (iii) any agreement in effect at the time a Person first became a Subsidiary of the Company, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Company; (iv) any agreement evidencing debt permitted by Section 5.02(a)(iii) that imposes restrictions on the property acquired; (v) by reason of customary provisions restricting assignments, licenses, subletting or other transfers contained in leases, licenses, joint venture agreements, purchase and sale or merger agreements and other similar agreements entered into in the ordinary course of business so long as such restrictions do not extend to assets other than those that are the subject of such lease, license or other agreement; (vi) in securitization transactions to the extent set forth in the documents evidencing such transactions so long as such restrictions do not extend to assets other than those that are the subject of such securitization transactions; or (vii) any agreement that amends, extends, refinances, renews or replaces any agreement described in the foregoing clauses; provided, however, that the terms and conditions of any such agreement are not materially less favorable to the Loan Parties or the Lenders with respect to such dividend and payment restrictions than those under or pursuant to the agreement amended, extended, refinanced, renewed or replaced.

(g) Change in Nature of Business. Make, or permit any of its Material Subsidiaries to make, any material change in the nature of the business as carried on or as contemplated to be carried on by the Company and its Subsidiaries taken as a whole on the date hereof.

(h) Dividends and Other Payments. Declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of capital stock of the Company, or purchase, redeem or otherwise acquire for value (or permit any of its Subsidiaries to do so) any shares of any class of capital stock or any warrants, rights or options to acquire any such shares, now or hereafter outstanding, except that the Company may (i) declare and make any dividend payment or other distribution payable in common stock of the Company, (ii) purchase,

redeem or otherwise acquire shares of its common stock or warrants, rights or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock and (iii) if the Secured Leverage Ratio is at the time of such dividend payment or other distribution less than 2.75:1.00, declare or make any dividend payment or other distribution in cash in an amount equal to the amount of any Excess Cash Flow used to make a mandatory prepayment pursuant to Section 2.08(b).

(i) Investments in Other Persons. Make, or permit any of its Subsidiaries to make, any Investment in any Person, except the following (provided, that any Investment permitted by any clause below shall be permitted under this Section 5.02(i), notwithstanding that such Investment would not be permitted by any other clause):

(i) (A) Investments by the Company and its Subsidiaries in their Subsidiaries outstanding on the Conversion Date, (B) additional Investments by the Company and its Subsidiaries in the Company or the Subsidiary Guarantors, (C) Investments by any Loan Party in another Loan Party and (D) additional Investments by Subsidiaries of the Company that are not Loan Parties in other Subsidiaries that are not Loan Parties;

(ii) loans and advances to employees in the ordinary course of the business of the Company and its Subsidiaries as presently conducted in an aggregate principal amount not to exceed \$10,000,000 at any time outstanding;

(iii) Investments made by Loan Parties in Subsidiaries of the Company that are not Loan Parties in an aggregate amount not to exceed \$100,000,000 at any time outstanding (determined net of any repayments in respect of such Investments received in Cash Equivalents by any Loan Party); provided that no Default shall exist at the time such Investment is made or would result therefrom and; provided further that all such Investments shall be evidenced by an intercompany note, and pledged to the Agent as Collateral;

(iv) Investments in Hedge Agreements permitted under Section 5.02(m);

(v) Investments received in settlement of claims against another Person in connection with (A) a bankruptcy proceeding against such Person, (B) accounts receivable arising from or trade credit granted to, in the ordinary course of business, a financially troubled account debtor and (C) disputes regarding intellectual property rights;

(vi) Investments arising out of the receipt by the Company or any of its Subsidiaries of non-cash consideration for the sale, transfer or other disposition of assets permitted under Section 5.02(e),

(vii) Investments (including Investments in joint ventures) in an aggregate amount not to exceed (i) in any fiscal year, an amount equal to (1) the sum of \$20,000,000, plus up to 50% of the portion of such \$20,000,000 available in the following fiscal year, plus any unused amounts from prior fiscal years, minus (2) any portion of the amount available in such fiscal year used in the preceding fiscal year and (ii) in the aggregate, \$100,000,000 , and

(viii) Investments by the Company and its Subsidiaries in cash and Cash Equivalents.

(j) Prepayments, Amendments, Etc. of Debt. (i) Except with respect to Debt under the Revolving Credit Agreement (or any Permitted Refinancing thereof), prepay, redeem, purchase,

defease, convert into cash or otherwise satisfy prior to the scheduled maturity thereof in any manner, or permit any of its Subsidiaries to prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity thereof in any manner or make any payment in violation of any subordination terms of, any Debt (it being understood that regularly scheduled payments of interest shall be permitted), except (A) regularly scheduled (including repayments of revolving facilities) or required repayments or redemptions of Debt permitted hereunder, provided that (1) before and after giving effect to such prepayment, redemption, purchase, defeasance or other satisfaction, no Default shall have occurred and be continuing and (2) the Agent shall have received a certificate from a Responsible Officer of the Company certifying compliance with the foregoing clause (1), (B) any repayments of subordinated Debt to the Loan Parties that was permitted to be incurred under this Agreement, (C) conversion of convertible debt into common stock of the Company and payments of cash in lieu of fractional shares upon any such conversion, or (D) with the proceeds of any Permitted Refinancing permitted under Section 5.02(d), (ii) amend, modify or change in any manner adverse to the Lenders any term or condition of the Revolving Credit Agreement or any related loan documents or any subordinated Debt, or (iii) amend, modify or change any term or condition in the Revolving Credit Agreement or any related loan documents, other than to the extent permitted under the Intercreditor Agreement.

(k) Transactions with Affiliates. Conduct or enter into, or permit any of its Subsidiaries to conduct or enter into, any transactions otherwise permitted under this Agreement with any of its or their Affiliates except on terms that are fair and reasonable and no less favorable to the Company or such Subsidiary than it would obtain in a comparable arm's-length transaction (determined in the reasonable judgment of the Company) with a Person not an Affiliate, other than (i) intercompany transactions among the Company and its wholly-owned Subsidiaries, (ii) fees and other benefits to non-officer directors of the Company and its Subsidiaries and (iii) employment, severance and other similar arrangements and employee benefits with officers and employees of the Company and its Subsidiaries.

(l) Negative Pledges. Not, and not permit any Subsidiary to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, except with respect to (a) specific property encumbered to secure payment of particular Debt or to be sold pursuant to an executed agreement with respect to a Disposition or IP License permitted hereunder, (b) restrictions set forth in the documents governing the Second Lien Debt, the Revolving Credit Agreement, and in the documents governing other existing Indebtedness as set forth on Schedule 5.02(1) and (c) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided, that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be).

(m) Hedge Agreements. Not, and not permit any of its Subsidiaries to, enter into any Hedge Agreement, other than Hedge Agreements designed to hedge against fluctuations in interest rates, foreign exchange rates or in commodity prices entered into in the ordinary course of business and consistent with existing business practice and not for speculative purposes.

(n) Changes to Organization Documents and Material Agreements. Amend, modify or waive, or permit any of its Subsidiaries to amend, modify or waive, (i) its certificate of incorporation, by-laws or other organizational documents or (ii) its rights and obligations under any material contractual obligation or agreement, in each case if such amendment, modification or waiver could reasonably be expected to materially adversely affect the interests of the Lenders.

(o) Sale Leaseback Transactions. Except as otherwise set forth on Schedule 5.02(o) and except for any such transactions involving Eastman Business Park in Rochester, NY, real property

relating to the Specified Sale and the Company's premises located at 343 State Street, Rochester NY 14650, not, and not permit any of its Subsidiaries to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereinafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred, except for any such sale of any fixed or capital asset that is made for cash consideration in an amount not less than the cost of such fixed or capital asset and is consummated within 90 days after the Company or such Subsidiary acquires or completes the construction of such asset.

(p) Creation of Subsidiaries. Not, and not permit any of its Subsidiaries that is a Loan Party to, establish, create or acquire any Subsidiary unless the Company or such Subsidiary that is a Loan Party shall have caused the requirements of Section 5.01(i) with respect to such established, created or acquired Subsidiary, and the assets and equity interests of such established, created or acquired Subsidiary, to be satisfied.

(q) Selected Payments. The Company shall not, and not permit any of its Subsidiaries to, make payments in respect of a settlement relating to the UK Pension Scheme other than pursuant to the UK Pension Settlement Agreement.

SECTION 5.03. Financial Covenants. So long as any Loan or any other payment obligation of any Loan Party of which the Company has knowledge under any Loan Document shall remain unpaid the Company:

(a) Minimum Cash Interest Coverage Ratio. Shall not permit the Cash Interest Coverage Ratio on the last day of any fiscal quarter set forth in the table below to be less than the amount set forth opposite such period:

<b>Period Ending</b>	<b>Minimum Cash Interest Coverage Ratio</b>
December 31, 2013	1.40x
March 31, 2014	1.75x
June 30, 2014	1.95x
September 30, 2014	2.15x
December 31, 2014	2.55x
March 31, 2015	2.75x
June 30, 2015	2.90x
September 30, 2015	3.10x
December 31, 2015	3.25x
March 31, 2016	3.25x
June 30, 2016	3.25x
September 30, 2016	3.25x
December 31, 2016	3.25x
March 31, 2017	3.25x
June 30, 2017	3.25x
September 30, 2017	3.25x
December 31, 2017	3.25x

(b) Maximum Capital Expenditures. Shall not permit Capital Expenditures of the Company and its Subsidiaries for any period set forth in the table below to be greater than the amount set forth opposite such period:

<b>Period Ending</b>	<b>Maximum Capital Expenditures</b>
December 31, 2013	\$78,500,000
December 31, 2014	\$80,300,000
December 31, 2015	\$77,800,000
December 31, 2016	\$80,300,000
December 31, 2017	\$85,900,000

(c) Maximum Secured Leverage Ratio. Shall not permit the Secured Leverage Ratio on the last day of any fiscal quarter set forth in the table below to exceed the applicable ratio set forth opposite such period:

<b>Period Ending</b>	<b>Maximum Secured Leverage Ratio</b>
December 31, 2013	4.55x
March 31, 2014	4.35x
June 30, 2014	4.10x
September 30, 2014	3.70x
December 31, 2014	3.10x
March 31, 2015	2.90x
June 30, 2015	2.80x
September 30, 2015	2.75x
December 31, 2015	2.75x
March 31, 2016	2.75x
June 30, 2016	2.75x
September 30, 2016	2.75x
December 31, 2016	2.75x
March 31, 2017	2.75x
June 30, 2017	2.75x
September 30, 2017	2.75x
December 31, 2017	2.75x

(d) Minimum U.S. Liquidity. Shall not permit, as of the close of business on any day, U.S. Liquidity to be less than \$100,000,000.

## ARTICLE VI

### EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events (“Events of Default”) shall occur and be continuing:

(a) Non-Payment. (i) The Company shall fail to pay any principal of any Loan when the same becomes due and payable; (ii) the Company shall fail to pay any interest on any Loan or fees within three Business Days after the same becomes due and payable; or (iii) any Loan Party shall fail to make any other payment under any Loan Document, within three Business Days after notice of such failure is given by the Agent or any Lender to the Company; or

(b) Representations. Any representation, warranty, certification or other statement of fact made or deemed made by the Company or by any Loan Party in any Loan Document to which it is a party or by the Company (or any of its officers) in a certificate delivered under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made or deemed made; or

(c) Specific Covenants. (i) The Company shall fail to perform or observe any term, covenant or agreement contained in Sections 5.01(d), clauses (i) through (viii) (and, in the case of clause (i), such failure shall continue for 5 Business Days), (ix) (and, in the case of clause (ix), such failure shall continue for 5 days), or (xiii) of 5.01(h), 5.01(l), 5.02 or 5.03, or (ii) any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Company by the Agent or any Lender; or

(d) Cross Default. (i) The Company or any of its Subsidiaries shall fail to pay any principal of or premium or interest on any Debt that is outstanding in a principal, or in the case of Hedge Agreement Obligations, net amount of, at least (x) in the case of the Company and the U.S. Subsidiaries, \$[25],000,000 in the aggregate or (y) in the case of the Non-U.S. Subsidiaries, \$50,000,000 in the aggregate (but in each case excluding Debt outstanding hereunder), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to cause, or to permit the holders or beneficiaries of such Debt (or a trustee or agent on behalf of such holders or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, in each case prior to the stated maturity of such Debt; or (iii) any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(e) Insolvency Proceedings, Etc. (i) The Company or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or (ii) any proceeding shall be instituted by or against the Company or any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization,



arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, interim receiver, monitor, trustee, custodian or other similar official for it or for any substantial part of its property and in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or (iii) any Material Subsidiary of the Company shall take any corporate action to authorize any of the actions set forth above in this Section 6.01(e).

(f) Judgments. Except as set forth on Schedule 6.01(f), (i) Judgments or orders for the payment of money in excess of \$25,000,000 in the aggregate shall be rendered against the Company or any of its Material Subsidiaries and (x) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (y) there shall be any period of 10 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect or (ii) there shall be rendered against the Loan Parties or any other Material Subsidiaries a nonmonetary judgment with respect to any event which causes or would reasonably be expected to cause a Material Adverse Effect, and such nonmonetary judgment shall not be reversed, stayed or vacated within 30 days after the entry thereof; or

(g) Change of Control. Except in connection with the Reorganization Plan, (i) Any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934), directly or indirectly, of Voting Stock of the Company (or other securities convertible into such Voting Stock) representing 35% or more of the combined voting power of all Voting Stock of the Company; or (ii) during any period of up to 24 consecutive months, commencing before or after the date of this Agreement, individuals who at the beginning of such 24-month period were directors of the Company together with individuals who were either (x) elected by a majority of the remaining members of the board of directors of the Company or (y) nominated for election by a majority of the remaining members of the board of directors of the Company, shall cease for any reason to constitute a majority of the board of directors of the Company; or

(h) ERISA Events. (i) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, (x) any ERISA Event shall have occurred with respect to a Plan or (y) any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan; or

(ii) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Loan Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds \$25,000,000; or

(iii) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization, insolvent or is being terminated, within the meaning of Title IV of ERISA, or has been determined to be in “endangered” or “critical” status within the meaning of Section 432 of the Code or Section 305 of ERISA, and as a result of such reorganization, insolvency, termination or determination, the aggregate annual contributions of the Loan Parties and the ERISA Affiliates to all Multiemployer Plans that are then in reorganization, insolvent, being terminated or in endangered or critical status have been or will be increased over the amounts contributed to

such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization, insolvency, termination or determination occurs, by an amount exceeding \$25,000,000; or

(iv) Except pursuant to the transactions pursuant to the UK Pension Settlement Agreement, (A) (1) the UK Pension Scheme shall have commenced winding up or (2) the UK Pensions Regulator shall have issued a warning notice that it is considering issuing a financial support direction or contribution notice in relation to the UK Pension Scheme, and, in the case of each of clause (1) and clause (2), the amount of the deficit on winding up of the UK Pension Scheme would reasonably be expected to have a Material Adverse Effect, or (B) any Affiliate of the Company which currently participates in the UK Pension Scheme shall have ceased to participate therein or shall have withdrawn therefrom, and in each case such action would reasonably be expected to have a Material Adverse Effect; or

(v) The UK Pension Settlement Agreement shall cease to be valid and binding on or enforceable (other than the expiration thereof on the stated termination date) against the parties thereto, or is amended, supplemented or otherwise modified in a manner adverse to the Lenders; or

(i) Invalidity of Loan Documents. Any provision of any Loan Document after delivery thereof pursuant to Section 3.01 or 5.01(i) or (j) that is material to the substantial realization of the rights of the Lenders thereunder shall for any reason cease to be valid and binding on or enforceable against any Loan Party party to it, or any such Loan Party shall so state in writing; or

(j) Collateral Documents. Any Collateral Document or financing statement after delivery thereof pursuant to Section 3.01 or 5.01(i) or (j) shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority lien on and security interest in the Collateral (other than the Specified Collateral as set forth in Section [6(m)] of the Security Agreement) purported to be covered thereby;

then, and in any such event, the Agent shall at the request, or may with the consent of the Required Lenders (i) by notice to the Company, declare the Loans, all interest thereon and all other amounts payable in respect thereof under this Agreement to be forthwith due and payable, whereupon such Loans, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company; and (ii) subject to the provisions of the Intercreditor Agreement, exercise rights and remedies in respect of the Collateral in accordance with [Section 19] of the Security Agreement and/or the comparable provisions of any other Collateral Document and applicable law.

SECTION 6.02. Application of Funds; Intercreditor Provisions. After the exercise of remedies provided for in Section 6.01 (or after the Loans have become immediately due and payable), any amounts received by the Agent on account of the Obligations shall be applied by the Agent in the following order:

(a) With respect to amounts received from or on account of the Company, or in respect of any Collateral (subject to the proviso at the end of this Section 6.02(a)):

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article II) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Obligations in respect of the First Lien Loans, ratably among the First Lien Lenders in proportion to the respective amounts described in this clause Second held by them;

Third, to payment of that portion of the Obligations in respect of the Junior Loans, ratably among the Junior Loan Lenders in proportion to the respective amounts described in this clause Third held by them; and

Last, the balance, if any, after all of the Obligations have been paid in full in cash, to the Company or as otherwise required by law;

provided, that the application to the Obligations pursuant to this Section 6.02(a) of amounts received in respect of Collateral is expressly subject to the priorities set forth in the Intercreditor Agreement, and all such amounts shall first be allocated in accordance with such priorities before being applied to the Obligations pursuant to this Section 6.02(a).

(b) Without limiting the generality of the foregoing, this Section 6.02 is intended to constitute and shall be deemed to constitute a “subordination agreement” within the meaning of Section 510(a) of the Bankruptcy Code and is intended to be and shall be interpreted to be enforceable to the maximum extent permitted pursuant to applicable law. Amounts applied pursuant to clauses First through Last of Section 6.02(a) are to be applied, for the avoidance of doubt, in the order required by such clauses until the payment in full in cash of the applicable Obligations referred to in the applicable clause.

(c) If any Secured Party collects or receives any amounts received on account of the Obligations to which it is not entitled under Section 6.02(a) hereof, such Secured Party shall hold the same in trust for the applicable Secured Parties entitled thereto and shall forthwith deliver the same to the Agent, for the account of such Secured Parties, to be applied in accordance with Section 6.02(a) hereof, in each case until the prior payment in full in cash of the applicable Obligations of such Secured Parties.

(d) It is the intention of the parties hereto that (and to the maximum extent permitted by law the parties hereto agree that) the Obligations in respect of the First Lien Loans (and any security therefor) constitute a separate and distinct class (and separate and distinct claims) from the Obligations (and security therefor) in respect of the Junior Loans.

(e) (i) EACH LENDER WITH OUTSTANDING FIRST LIEN LOANS ACKNOWLEDGES AND AGREES THAT THE OBLIGATIONS IN RESPECT OF THE OUTSTANDING FIRST LIEN LOANS ARE ENTITLED TO DISTRIBUTIONS PURSUANT TO THIS SECTION 6.02 PRIOR TO ANY DISTRIBUTIONS BEING APPLIED TO THE OBLIGATIONS IN RESPECT OF OUTSTANDING JUNIOR LOANS.

## ARTICLE VII

### GUARANTY

SECTION 7.01. Guaranty; Limitation of Liability. (a) Each of the Company and each Subsidiary Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all obligations of each other Loan Party and each other Subsidiary of the Company now or hereafter existing under or in respect of the Loan Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing obligations), whether direct or indirect, absolute or contingent, and whether for

principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise (such obligations being the “Guaranteed Obligations”), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Agent or any other Lender in enforcing any rights under this Guaranty or any other Loan Document. Without limiting the generality of the foregoing, each Guarantor’s liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party or Subsidiary of the Company, as applicable, to the Agent or any Lender under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party or Subsidiary, as the case may be.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Agent and each other Lender, hereby confirms that it is the intention of all such Persons that this Guaranty and the obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty and the obligations of such Guarantor hereunder. To effectuate the foregoing intention, the Agent, the Lenders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

(c) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Agent or any Lender under this Guaranty or any guaranty supplement of the Guaranteed Obligations, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor and each other guarantor so as to maximize the aggregate amount paid to the Agent and the Lenders under or in respect of the Loan Documents.

SECTION 7.02. Guaranty Absolute. Each Guarantor guarantees that the applicable Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agent or any Lender with respect thereto. The obligations of each Guarantor under or in respect of this Guaranty are independent of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against the Company or any other Loan Party or whether the Company or any other Loan Party is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the applicable Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the applicable Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the applicable Guaranteed Obligations or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the applicable Guaranteed Obligations or any other obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party or any of its Subsidiaries;

(f) any failure of the Agent or any Lender to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party now or hereafter known to the Agent or such Lender (each Guarantor waiving any duty on the part of the Agent and the Lenders to disclose such information);

(g) the failure of any other Person to execute or deliver this Agreement, any Guaranty Supplement or any other guaranty or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety with respect to the applicable Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Agent or any Lender that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the applicable Guaranteed Obligations is rescinded or must otherwise be returned by the Agent or any Lender or any other Person upon the insolvency, bankruptcy or reorganization of the Company or any other Loan Party or otherwise, all as though such payment had not been made.

SECTION 7.03. Waivers and Acknowledgments. (a) Each Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the applicable Guaranteed Obligations and this Guaranty and any requirement that the Agent or any Lender protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all applicable Guaranteed Obligations whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Agent or any Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the obligations of such Guarantor hereunder.

(d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Agent or any Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by the Agent or such Lender.

(e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in Section 7.02 and this Section 7.03 are knowingly made in contemplation of such benefits.

**SECTION 7.04. Subrogation.** Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against the Company, any other Loan Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under or in respect of this Guaranty or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Agent or any Lender against the Company, any other Loan Party or any other guarantor of some or all of the Guaranteed Obligations or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Company, any other Loan Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty and (b) the Termination Date, such amount shall be received and held in trust for the benefit of the Agent and the Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any applicable Guaranteed Obligations or other amounts payable under this Guaranty by such Guarantor thereafter arising. If (i) any Guarantor shall make payment to the Agent or any Lender of all or any part of the applicable Guaranteed Obligations, (ii) all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor shall have been paid in full in cash and (iii) the Termination Date shall have occurred, the Agent and the Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the applicable Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

**SECTION 7.05. Guaranty Supplements.** Upon the execution and delivery by any Person of a guaranty supplement in substantially the form of Exhibit F hereto (each, a "Guaranty Supplement"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Guarantor hereunder, and each reference in this Guaranty to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and each reference in any other Loan Document to a "U.S. Subsidiary Guarantor", as applicable, shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guaranty," "hereunder," "hereof" or words of like import referring to this Guaranty, and each reference in any other Loan Document to the "Guaranty," "thereunder," "thereof" or words of like import referring to this Guaranty, shall mean and be a reference to this Guaranty as supplemented by such Guaranty Supplement.

SECTION 7.06. Subordination. (a) Each Guarantor hereby subordinates any and all debts, liabilities and other obligations owed to such Guarantor by each other Loan Party (the “Subordinated Obligations”) to the applicable Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 7.06:

(b) Prohibited Payments, Etc. Except during the continuance of an Event of Default, each Guarantor may receive regularly scheduled payments from any other Loan Party on account of the Subordinated Obligations. After the occurrence and during the continuance of any Event of Default, however, unless the Required Lenders otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations.

(c) Prior Payment of Guaranteed Obligations. In any proceeding under the Bankruptcy Code relating to any other Loan Party, each Guarantor agrees that the Lenders shall be entitled to receive payment in full in cash of all applicable Guaranteed Obligations (including all interest and expenses accruing after the commencement of a proceeding under the Bankruptcy Code, whether or not constituting an allowed claim in such proceeding (“Post-Petition Interest”)) before such Guarantor receives payment of any Subordinated Obligations.

(d) Turn-Over. Subject to the Intercreditor Agreement, after the occurrence and during the continuance of any Event of Default, each Guarantor shall, if the Agent (with the consent or at the direction of the Required Lenders) so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Agent and the Lenders and deliver such payments to the Agent on account of the applicable Guaranteed Obligations (including all Post-Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(e) Agent Authorization. Subject to the Intercreditor Agreement, after the occurrence and during the continuance of any Event of Default, the Agent is authorized and empowered (but without any obligation to so do), in its discretion, (i) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and to apply any amounts received thereon to the applicable Guaranteed Obligations (including any and all Post-Petition Interest), and (ii) to require each Guarantor (A) to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and (B) to pay any amounts received on such obligations to the Agent for application to the applicable Guaranteed Obligations (including any and all Post-Petition Interest).

SECTION 7.07. Continuing Guaranty; Assignments. This Guaranty is a continuing guaranty and shall (a) except as provided in the next succeeding sentence, remain in full force and effect until the latest of (i) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty and (ii) the Termination Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Agent and the Lenders and their successors, permitted transferees and permitted assigns. Upon the sale of a Guarantor or any or all of the assets of any Guarantor to the extent permitted in accordance with the terms of the Loan Documents or upon such Guarantor otherwise ceasing to be a Subsidiary of the Company organized under the laws of a state of the United States of America without violation of the terms of this Agreement, such Guarantor (and its Subsidiaries) or such assets shall be automatically released from this Guaranty or any Guaranty Supplement, and all pledges and security interests of the equity of such Guarantor or any Subsidiary of such Guarantor and all other pledges and security interests in the assets of such Guarantor and any of its Subsidiaries shall be released as provided in Section 9.15. Without limiting the generality of clause (c) above, the Agent or any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, in each

case as and to the extent provided in Section 9.08. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

## ARTICLE VIII

### THE AGENT

SECTION 8.01. Authorization and Action. (a) Each Lender hereby irrevocably appoints Wilmington Trust, National Association to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) Each Lender hereby further irrevocably appoints Wilmington Trust, National Association to act on its behalf as Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The Agent shall act on behalf of the Lenders and shall have all of the benefits and immunities (i) provided to the Agent in this Article VIII with respect to any acts taken or omissions suffered by the Agent in connection with its activities in such capacity as fully as if the term “Agent” as used in this Article VIII included the Agent with respect to such acts or omissions, and (ii) as additionally provided herein with respect to the Agent.

(c) The provisions of this Article are solely for the benefit of the Agent and the Lenders, and neither the Company nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

SECTION 8.02. Agent Individually. (a) The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Company or any of their Subsidiaries or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender understands that the Person serving as Agent, acting in its individual capacity, and its Affiliates (collectively, the “Agent’s Group”) are engaged in a wide range of financial services and businesses (including, but not limited to, trust, investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 8.02 as “Activities”) and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent’s Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Company, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender understands and agrees that in engaging in the Activities, the Agent’s Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders that



are not members of the Agent's Group. None of the Agent nor any member of the Agent's Group shall have any duty to disclose to any Lender or use on behalf of the Lenders, and shall not be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Agent shall deliver or otherwise make available to each Lender such documents as are expressly required by any Loan Document to be transmitted by the Agent to the Lenders.

(c) Each Lender further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders (including the interests of the Lenders hereunder and under the other Loan Documents). Each Lender agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of the Person serving as Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification to any Lender. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the Agent's Group of information (including Company Information) concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) owing by the Agent or any member of the Agent's Group to any Lender including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

SECTION 8.03. Duties of Agent; Exculpatory Provisions. (a) The Agent's duties hereunder and under the other Loan Documents are solely ministerial and administrative in nature and the Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (i) the Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) the Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent or any of its Affiliates to liability or that is contrary to any Loan Document or applicable law and (iii) the Agent shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Company or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.01 or 9.03) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until the Company or any Lender shall have given notice to the Agent describing such Default and such event or events.

(c) Neither the Agent nor any member of the Agent's Group shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, representation or other

information made or supplied in or in connection with this Agreement, any other Loan Document or the information presented to the other Lenders by the Company, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Collateral Documents or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to the Agent.

(d) Nothing in this Agreement or any other Loan Document shall require the Agent or any of its Related Parties to carry out any “know your customer” or other checks in relation to any Person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or any of its Related Parties.

**SECTION 8.04. Reliance by Agent.** The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless an officer of the Agent responsible for the transactions contemplated hereby shall have received notice to the contrary from such Lender prior to the making of such Loan, and in the case of a Borrowing, such Lender shall not have made available to the Agent such Lender’s ratable portion of such Borrowing. The Agent may consult with legal counsel (who may be counsel for the Company or any other Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**SECTION 8.05. Indemnification.** (a) Each Lender severally agrees to indemnify the Agent (to the extent not promptly reimbursed by the Company) from and against such Lender’s pro rata share (based on the Loans held by such Lender relative to the total Loans then outstanding) of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent under this Agreement (collectively, the “Indemnified Costs”), provided that no Lender shall be liable for any portion of the Indemnified Costs resulting from the Agent’s gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any reasonable out-of-pocket expenses (including reasonable counsel fees) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, to the extent that the Agent is not promptly reimbursed for such expenses by the Company. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.05 applies whether any such investigation, litigation or proceeding is brought by the Agent, any Lender or a third party.

(b) The failure of any Lender to reimburse the Agent promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Agent for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Agent for such other Lender's ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 8.05 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes. The Agent agrees to return to the Lenders their respective ratable shares of any amounts paid under this Section 8.05 that are subsequently reimbursed by the Company.

SECTION 8.06. Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights, and powers hereunder or under any other Loan Document by or through any one or more co-agents or sub-agents appointed by the Agent. The Agent and any such co-agent or sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Each such co-agent and sub-agent and the Related Parties of the Agent and each such co-agent and sub-agent shall be entitled to the benefits of all provisions of this Article VIII and Article IX (as though such co-agents and sub-agents were the "Agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.07. Resignation of Agent. The Agent may at any time give notice to the Lenders and the Company of its resignation in respect of the Facilities. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (such 30-day period, the "Lender Appointment Period"), then the retiring Agent may on behalf of the applicable Lenders, appoint a successor Agent meeting the qualifications set forth above. In addition and without any obligation on the part of the retiring Agent to appoint, on behalf of the Lenders, a successor Agent, the retiring Agent may at any time upon or after the end of the Lender Appointment Period notify the Company and the Lenders that no qualifying Person has accepted appointment as successor Agent and the effective date of such retiring Agent's resignation. Upon the resignation effective date established in such notice and regardless of whether a successor Agent has been appointed and accepted such appointment, the retiring Agent's resignation shall nonetheless become effective and (i) the retiring Agent shall be discharged from its duties and obligations as Agent hereunder and under the other Loan Documents in respect of the Facilities as to which it has resigned and (ii) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each applicable Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties as Agent of the retiring (or retired) Agent in respect of the Facilities as to which it has resigned, and the retiring Agent shall be discharged from all of its duties and obligations as Agent hereunder or under the other Loan Documents in respect of the Facilities as to which it has resigned (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Company to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article VIII and Section 9.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

SECTION 8.08. Non-Reliance on Agent and Other Lenders. (a) Each Lender confirms to the Agent, each other Lender and each of their respective Related Parties that it (i) possesses (individually or

through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Agent, any other Lender or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) making Loans and other extensions of credit hereunder and under the other Loan Documents and (z) in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, (ii) that it has, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, continue to be solely responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Loan Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(i) the financial condition, status and capitalization of the Company and each other Loan Party;

(ii) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document;

(iii) determining compliance or non-compliance with any condition hereunder to the making of a Loan and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition;

(iv) the adequacy, accuracy and/or completeness of any information delivered by the Agent, any other Lender or by any of their respective Related Parties under or in connection with this Agreement or any other Loan Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

SECTION 8.09. Agent May File Proofs of Claim. In case of the pendency of any proceeding under the Bankruptcy Code or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Company) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and counsel and all other amounts due the Lenders and the Agent hereunder) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, interim receiver, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent hereunder.

SECTION 8.10. Intercreditor Agreement. Each of the Lenders hereby authorizes and directs the Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that the Agent in its various capacities thereunder may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement. Each Lender hereunder (a) consents to any subordination of Liens provided for in the Intercreditor Agreement, (b) agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement, (c) authorizes and instructs the Agent to enter into the Intercreditor Agreement as Agent and on behalf of such Lender and (d) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of such Intercreditor Agreement.

## ARTICLE IX

### MISCELLANEOUS

SECTION 9.01. Amendments, Waivers. For the avoidance of doubt, prior to the Conversion Date this Agreement may be amended by the Required Lead Lenders (as defined in the Existing DIP Credit Agreement). After the Conversion Date, no amendment or waiver of any provision of this Agreement or the Notes, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, or in the case of any amendment or waiver that only affects one class of Loans and does not adversely affect any other Class of Loans, the Required First Lien Lenders or Required Junior Loan Lenders, as applicable, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that (a) no amendment, waiver or consent shall, unless in writing and signed by all the Lenders, do any of the following: (i) release all or substantially all of the Collateral in any transaction or series of related transactions, (ii) release one or more Guarantors (or otherwise limit such Guarantors' liability with respect to the obligations owing to the Agent and the Lenders under the Guaranties) if such release or limitation is in respect of all or substantially all of the value of the Guaranties, taken as a whole, to the Lenders, (iii) amend this Section 9.01 or (iv) amend or modify the definition of "Required Lenders", "Required First Lien Lenders", or "Required Junior Loan Lenders"; (b) no amendment, waiver or consent shall, unless in writing and signed by each Lender affected thereby, do any of the following: (i) reduce or forgive the principal of, or interest on, the Loans or any fees or other amounts payable hereunder or (ii) postpone any date fixed for any payment of principal of, or interest on, the Loans or any fees or other amounts payable hereunder; provided further that no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent, under this Agreement or any Note and (c) no amendment, waiver or consent shall, unless in writing and signed by, in the case of any amendment or waiver that only affects one Class of Loans and does not adversely affect any other Class of Loans, the Required First Lien Lenders or Required Junior Loan Lenders, as applicable, change the order of application of any prepayment or repayment of Loans among the Facilities from the application thereof set forth in Section 2.08 or Section 6.02, provided, however, notwithstanding clauses (i) and (ii) of clause (a) above, no consent or waiver or other approval of any Lender shall be required for any release of a Guaranty or Guaranty Supplement as provided in Section 7.07 or any release of Collateral as provided in Section 9.15 or in any Collateral Document.

SECTION 9.02. Notices, Etc.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company or the Agent, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 9.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Company).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Company may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Each Lender agrees that notice to it specifying that any Company Materials or other notices or communications have been posted to the Platform shall constitute effective delivery of such information, documents or other materials to such Lender for purposes of this Agreement; provided that if requested by any Lender, the Agent shall deliver a copy of the Company Materials, notices or other communications to such Lender by email or fax.

(c) Electronic Communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMPANY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE COMPANY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE COMPANY MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Company, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Company’ or the Agent’s transmission of Company Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Company, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(e) Change of Address, Etc. Each of the Company and the Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Company and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Company Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Company or their securities for purposes of United States Federal or state securities laws.

(f) Reliance by Agent and Lenders. The Agent, and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing) purportedly given by or on behalf of the Company even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Company shall indemnify the Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Company. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.03. No Waiver; Remedies. No failure on the part of any Lender or the Agent to exercise, and no delay in exercising, any right hereunder or under any Note 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. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 6.01 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 9.06 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under the Bankruptcy Code; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Article VI and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**SECTION 9.04. Costs and Expenses.** (a) The Company agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, (i) all due diligence, transportation, computer, duplication, appraisal, consultant, and audit expenses, (ii) the reasonable fees and expenses of counsel for the Lead Lenders and the Agent with respect thereto and (iii) fees and expenses incurred in connection with the creation, perfection or protection of the liens under the Loan Documents (including all reasonable search, filing and recording fees), provided, however, the Company shall not be required to pay fees or expenses of more than one counsel in any jurisdiction where the Collateral is located, with respect to advising each of the Agent, as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents, with respect to negotiations with any Loan Party or with other creditors of any Loan Party or any of its Subsidiaries arising out of any Default or any events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto. The Company further agrees to pay on demand all costs and expenses of the Agent, and each Lender, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of the Loan Documents, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally, including, without limitation, reasonable fees and expenses of counsel for the Agent and each Lender in connection with the enforcement of rights under this Agreement and the other Loan Documents. Without limiting the foregoing, the Company also agrees to pay all costs and expenses of the Lead Lenders as required under the Commitment Letter dated as of December 31, 2012 (as amended, supplemented, or otherwise modified from time to time) among the Lead Lenders and the Company.

(b) The Company agrees to indemnify and hold harmless the Agent, and each Lender and each of their Related Parties (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loans (which, for the avoidance of doubt does not include Taxes, Excluded Taxes and Other Taxes which shall be governed by Section 2.12) or (ii) the actual or alleged presence of Hazardous Materials on any property of the Company or any of its Subsidiaries or any Environmental Action relating in any way to



the Company or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense resulted from such Indemnified Party's gross negligence, bad faith or willful misconduct, as found in a final and non-appealable judgment by a court of competent jurisdiction. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Company and each Indemnified Party agrees not to assert any claim for special, indirect, consequential or punitive damages against the Company, the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Loans.

(c) If any payment of principal of, or Conversion of, any Eurodollar Rate Loan is made by the Company to or for the account of a Lender other than on the last day of the Interest Period for such Loan, as a result of a payment or Conversion pursuant to Section 2.06(d), 2.08 or 2.10, acceleration of the maturity of the Notes pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Loan upon an assignment of rights and obligations under this Agreement pursuant to Section 9.08 as a result of a demand by the Company pursuant to Section 9.08(a), the Company shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Loan.

(d) Without prejudice to the survival of any other agreement of any Loan Party hereunder or under any other Loan Document, the agreements and obligations of the Company contained in Sections 2.09, 2.12 and 9.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

(e) No Indemnified Party referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnified Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence, bad faith or willful misconduct of such Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(f) All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(g) The agreements in this Section shall survive the resignation of the Agent, the replacement of any Lender and the repayment, satisfaction or discharge of all the other Obligations.

**SECTION 9.05. Payments Set Aside.** To the extent that any payment by or on behalf of the Company is made to the Agent, or any Lender, or the Agent, or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under the Bankruptcy Code or otherwise, then (a) to the extent of such

recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 9.06. Right of Set-off. Subject to the final proviso to Section 6.01, upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Loans due and payable pursuant to the provisions of Section 6.01, the Agent, and each applicable Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Agent, or such Lender or such Affiliate to or for the credit or the account of the Company against any and all of the obligations of such Company now or hereafter existing under this Agreement and any Note held by the Agent, or such Lender, whether or not such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured, provided, however, that no such right shall exist against any deposit designated as being for the benefit of any governmental authority, provided, further, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 6.02 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the applicable Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender, the Agent, and each such Affiliate under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that the Agent, the Lenders or such Affiliates may have.

SECTION 9.07. Binding Effect. This Agreement shall become effective in accordance with Section 3.01 and thereafter shall be binding upon and inure to the benefit of the Company, the Agent, and each Lender and their respective successors and assigns, except that no Company shall have the right to assign its rights hereunder or any interest herein without the prior written consent of all of the Lenders.

SECTION 9.08. Assignments and Participations. (a) Each Lender may, with the consent of the Agent (not to be unreasonably withheld or delayed) in the case of an assignment to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender and, if demanded, by the Company so long as no Default shall have occurred and be continuing and only with respect to any Affected Lender, upon at least five Business Days' notice to such Lender and the Agent, shall, assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of the Loans of a Class owing to it and the Note or Notes held by it); provided, however, that (i) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender, or an assignment of all of a Lender's rights and obligations under this Agreement, the amount of the Loans of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than \$1,000,000 or an integral multiple of \$1,000,000 in excess thereof or unless the Company and the Agent otherwise agrees, (ii) each such assignment shall be to an Eligible Assignee, (iii) each such assignment made as a result of a demand by the Company

pursuant to this Section 9.08(a) shall be arranged by the Company after consultation with the Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Lender under this Agreement, (iv) no Lender shall be obligated to make any such assignment as a result of a demand by the Company pursuant to this Section 9.08(a) unless and until such Lender shall have received one or more payments from either the Company or one or more Eligible Assignees in an aggregate amount at least equal to the aggregate outstanding principal amount of the Loans owing to such Lender, together with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Lender under this Agreement, and (v) unless waived by the Agent in its sole discretion, the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance (and the assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire), together with any Note subject to such assignment and a processing and recordation fee of \$3,500 payable by the parties to each such assignment; provided, however, that (x) only one such fee shall be payable in connection with simultaneous assignments to or by two or more Approved Funds with respect to a Lender and (y) in the case of each assignment made as a result of a demand by the Company, such recordation fee shall be payable by the Company except that no such recordation fee shall be payable in the case of an assignment made at the request of the Company to an Eligible Assignee that is an existing Lender. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Sections 2.09, 2.12 and 9.04 to the extent any claim thereunder relates to an event arising prior to such assignment) and be released from its obligations (other than its obligations under Section 9.06 to the extent any claim thereunder relates to an event arising prior to such assignment) under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under any Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement as are delegated to the Agent by the terms hereof, together with such powers and discretion as are reasonably incidental

thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with any Note or Notes subject to such assignment, the Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Company

(d) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Company and the Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) The Agent shall maintain at its address referred to in Section 9.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the principal amount of Loans owing to each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Company, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Company or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(f) Each Lender may sell participations to one or more banks or other entities (other than the Company or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, the Loans owing to it and any Note or Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes of this Agreement, (iv) the Company, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (v) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, provided, however, that any agreement between a Lender and such participant may provide that the Lender will not, without the consent of participant, agree to any such amendment, waiver or consent which would reduce the principal of, or interest on, the Loans or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, the Loans or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

(g) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.08, disclose to the assignee or participant or proposed assignee or participant, any information relating to the Company furnished to such Lender by or on behalf of the Company; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of any Company Information relating to the Company received by it from such Lender.

(h) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

(i) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Company, maintain a register in the United States on which it enters the name and address of each participant and the principal amounts and stated interest of each participant's interest in the Loans or other obligations under this Agreement (the "Participant Register"); provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Loans or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that the Loans are in registered form under Treas. Reg. § 5f.103-1(c). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as owner of such participation for all purposes of this Agreement.

**SECTION 9.09. Confidentiality.** Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of any Loan Party furnished to the Agent or the Lenders by any Loan Party, including, without limitation (1) earnings and other financial information and forecasts, budgets, projections, plans, (including, without limitation, any confirmations of publicly disclosed advice regarding any material matter); (2) mergers, acquisitions, tender offers, joint ventures, disposition or changes in assets; (3) new products or discoveries or developments regarding the Company's customers or suppliers; (4) changes in control or in management; (5) changes in auditors or auditor notifications to the Company; (6) securities redemptions, splits, repurchase plans, changes in dividends, changes in rights of holders or sales of additional securities; and (7) negative news relating to such matters as physical damage to properties from significant events, loss of significant contractual relationship, material litigation, defaults under contracts or securities, bankruptcy (including the Cases) or receivership (such information being referred to collectively herein as the "Company Information"), except that each of the Agent and each of the Lenders may disclose Company Information (i) to its Affiliates and to its and its Affiliates' managers, administrators, partners, employees, trustees, officers, directors, agents, advisors and other representatives solely for purposes of this Agreement, any Notes and the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Company Information and instructed to keep such Company Information confidential on terms substantially no less restrictive than those provided herein), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulating authority, such as the National Association of Insurance Commissioners), provided, to the extent permitted by law and practicable under the circumstances, the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure (except in the case of any disclosure made in the course of any examination conducted by bank regulatory authority), (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, provided, to the extent permitted by law and practicable under the circumstances,

the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure, (iv) subject to this Section 9.09, to any other Lender to this Agreement which has requested such information, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions no less restrictive than those of this Section 9.09, to any assignee or participant or prospective assignee or participant or any pledge referred to in Section 9.08(g), (vii) to the extent such Company Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 9.09 by the Agent or such Lender, or (B) is or becomes legally available to the Agent or such Lender on a nonconfidential basis from a source other than a Loan Party, provided that the source of such information was not known by the Agent or such Lender to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligations of confidentiality to a Loan Party or any other party with respect to such information, (viii) with the consent of the Company, (ix) to any party hereto and (x) subject to the Agent's or the applicable Lender's receipt of an agreement containing provisions no less restrictive than those of this Section, to any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap, derivative or other transaction under which payments are to be made by reference to the Company and its Obligations, this Agreement or payments hereunder. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information

**SECTION 9.10. Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto 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. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or in .pdf (or similar electronic format) shall be effective as delivery of a manually executed counterpart of this Agreement.

**SECTION 9.11. Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**SECTION 9.12. Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 9.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by the Bankruptcy Code, as determined in good faith by the Agent, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 9.13. Jurisdiction. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION, OF THE COURTS OF THE STATE OF NEW YORK IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE COMPANY OR ANY OTHER LOAN PARTIES OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE COMPANY AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.14. PATRIOT Act Notice. Each Lender and the Agent (for itself and not on behalf of any Lender) hereby notifies the Company that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies such Company, which information includes the name and address of such Company and other information that will allow such Lender or the Agent, as applicable, to identify such Company in accordance with the PATRIOT Act. Each Company shall provide such information and take such actions as are reasonably requested by the Agent or any Lenders in order to assist the Agent and the Lenders in maintaining compliance with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act.

SECTION 9.15. Release of Collateral; Termination of Loan Documents. (a) (i) Upon the sale, lease, transfer or other disposition of any item of Collateral of any Loan Party (other than to any Person that is not, and that is not required to be, a Loan Party) in accordance with the terms of the Loan Documents, including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of the Loan Party that owns such Collateral, (ii) upon a Subsidiary ceasing to be a Subsidiary, and (iii) at any time a Loan Party’s guarantee of the obligations under the Loan Documents ceases as provided in Section 7.07, the security interests granted by the Loan Documents with respect to such items of Collateral and/or Loan Party shall immediately terminate and automatically be released, and the Agent will, at the Company’s expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents.

(b) Upon the payment in full in cash of all Obligations (other than contingent indemnification obligations for which no claim has been asserted), (x) except as otherwise specifically stated in this Agreement or the other Loan Documents, this Agreement and the other Loan Documents shall terminate and be of no further force or effect, (y) the Agent shall release or cause the release of all Collateral from the Liens of the Loan Documents and the Guarantors of all Obligations under each Guaranty, and will, at the Company’s expense, execute and deliver such documents as the Company may reasonably request to evidence the release of Collateral from the assignment and security interest granted under the Collateral Documents and the obligations of the Guarantors and (z) each Lender that has requested and received a Note shall return such Note to the Company marked “cancelled” or “paid in full”; provided, however, that the Lender’s obligations under this Section 9.15 shall survive until satisfied.

SECTION 9.16. Judgment Currency. (a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase Dollars with such other currency at the Exchange Rate on the Business Day preceding that on which final judgment is given.

(b) The obligation of the Company in respect of any sum due from it in any currency (the “Primary Currency”) to any Lender or the Agent hereunder shall, notwithstanding any judgment in any other currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Agent (as the case may be), of any sum adjudged to be so due in such other currency, such Lender or the Agent (as the case may be) may in accordance with normal banking procedures purchase the applicable Primary Currency with such other currency; if the amount of the applicable Primary Currency so purchased is less than such sum due to such Lender or the Agent (as the case may be) in the applicable Primary Currency, the Company agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Agent (as the case may be) against such loss, and if the amount of the applicable Primary Currency so purchased exceeds such sum due to any Lender or the



Agent (as the case may be) in the applicable Primary Currency, such Lender or the Agent (as the case may be) agrees to remit to such Company such excess.

SECTION 9.17. No Fiduciary Duty. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Company and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agent and the Lenders are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Agent and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Loan Parties are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent and the Lenders each are and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have not been, are not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Agent nor the Lenders have any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Agent nor the Lenders have any obligation to disclose any of such interests to the Loan Parties or their respective Affiliates. To the fullest extent permitted by law, the Company and each of the other Loan Parties hereby waives and releases any claims that it may have against the Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.18. Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Acceptance or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act or similar foreign laws.

[The remainder of this page intentionally left blank]

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.

EASTMAN KODAK COMPANY

By \_\_\_\_\_

Name:

Title:

[U.S. SUBSIDIARY GUARANTORS]

By \_\_\_\_\_

Name:

Title:

Wilmington Trust, National Association, as Agent

By \_\_\_\_\_

Name:

Title:

[LENDER],  
as a [Lender]

By \_\_\_\_\_  
Name:  
Title: