

**THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:)	
)	Chapter 11
GROEB FARMS, INC.)	
)	Case No. 13-58200
Debtor.)	
)	Hon. Walter Shapero

NOTICE OF FILING AMENDED FINAL DIP ORDER

The Debtor, by and through its attorneys, Foley & Lardner LLP, hereby submit the attached:

Exhibit 1: Amended Final Order (I) Authorizing The Debtor To (A) Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, 364(C), 364(D)(1), And 364(E) And (B) Utilize Cash Collateral Of Prepetition Secured Entities Pursuant To 11 U.S.C. § 363, (II) Granting Adequate Protection To Prepetition Secured Lender Pursuant To 11 U.S.C. §§ 361, 362, 363, And 364, And (III) Granting Related Relief;

Exhibit 2: Redline Comparison of Amended Final DIP Order to the Final DIP Order filed November 1, 2013 at Docket No. 153.

Dated: November 6, 2013
Detroit, Michigan

FOLEY & LARDNER LLP

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Possession*

EXHIBIT 1: PROPOSED FINAL DIP ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:)	Chapter 11
)	
GROEB FARMS, INC.)	Case No. 13-58200
)	
Debtor.)	Honorable Walter Shapero
)	

**FINAL ORDER (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN POSTPETITION
FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(C), 364(D)(1), AND 364(E)
AND (B) UTILIZE CASH COLLATERAL OF PREPETITION SECURED ENTITIES
PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO
PREPETITION SECURED LENDER PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND
364, AND (III) GRANTING RELATED RELIEF**

Upon the motion of Groeb Farms, Inc.,¹ as debtor-in-possession (the “Debtor” or the “Borrower”) in the above-captioned chapter 11 case (the “Chapter 11 Case”), dated October 1, 2013 (the “Motion”), for entry of the Interim Order (as defined herein) and a final order (this “Final Order”), under sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”) and Rule 4001-2 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Michigan (the “Local Rules”), seeking, among other things:

(i) authorization for the Debtor to obtain post-petition financing in the form of revolving loans drawn under a debtor-in-possession credit facility (the “DIP Facility”),

¹ All defined terms shall have the meaning ascribed to them in DIP Credit Agreement (as defined below) unless otherwise defined herein.

pursuant to the terms of the Interim Order, this Final Order, and the DIP Loan Documents (as defined below), the foregoing transactions to include:

- (a) a senior secured super-priority revolving credit facility providing for the borrowing of loans from time to time in accordance with the Approved Budget (as defined below) in an aggregate maximum principal amount of up to \$27 million, of which up to \$17.1 million (the “Interim Borrowing Amount”) was made available upon entry of the Interim Order;
- (b) the repayment of all the obligations outstanding on account of Advances (as defined in the Prepetition Credit Agreement) other than \$3,000,000 in principal amount (the “Prepetition Facility Advance Repayment”);
- (ii) subject to entry of this Final Order, the repayment of all Term Loan (as defined in the Prepetition Credit Agreement) obligations outstanding under the Prepetition Credit Agreement (the “Prepetition Facility Term Loan Repayment”);
- (iii) authorization for the Debtor to execute and enter into that certain Senior Secured Super-Priority Priming Debtor-In-Possession Credit and Security Agreement, by and between the Borrower and the lender party thereto (the “DIP Lender”), dated as of October 3, 2013 (as the same may be amended, restated, supplemented, or otherwise modified from time to time pursuant to the terms thereof, the “DIP Credit Agreement”), a copy of which is attached hereto as Exhibit A, and any related documents and instruments delivered pursuant to or in connection therewith (collectively, the “DIP Loan Documents”), and authorization for the Debtor to perform such other and further acts as may be required in connection with the DIP Loan Documents;

(iv) authorization for the Debtor's use of proceeds of the DIP Facility, all cash and equivalents, and cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (as so defined, but excluding any cash collateral subject to prior Non-Primed Liens (as defined below), if any, "Cash Collateral"), and the collection and application of Cash Collateral, pursuant to the terms and conditions set forth in the Interim Order, this Final Order, and the DIP Credit Agreement;

(v) the grant of (i) valid, enforceable, non-avoidable, and fully perfected first priority priming liens on and senior security interests in (including liens pursuant to sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) all DIP Collateral (as defined below) to the DIP Lender to secure all obligations of the Debtor under and with respect to the DIP Facility (collectively, the "DIP Obligations"), and (ii) super-priority claims (including a super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Lender having recourse to all prepetition and postpetition property of the Debtor's estate, now owned or hereafter acquired, including, subject to and upon entry of this Final Order, any Debtor's rights under section 506(c) of the Bankruptcy Code and the proceeds thereof (but not including, for the avoidance of doubt, Avoidance Actions Proceeds (as defined herein) or D&O Proceeds (as defined herein));

(vi) the grant of adequate protection to the Prepetition Secured Lender (as defined below) under that certain Credit and Security Agreement, dated as of January 30, 2012 (as amended, restated, supplemented, or otherwise modified from time to time and in effect on the date hereof, the "Prepetition Credit Agreement"), between the Borrower and HC Capital Holdings 0909A, LLC (the "Prepetition Secured Lender"), on account of (i) the Debtor's use of

Cash Collateral and (ii) the priming of the liens and security interests held by the Prepetition Secured Lender under the Prepetition Credit Agreement and all security agreements, pledge agreements, mortgages, deeds of trust, and other security and ancillary documents executed by the Borrower in favor of the Prepetition Secured Lender in connection therewith (collectively, the “Prepetition Credit Agreement Collateral Documents” and, together with the Prepetition Credit Agreement, the “Prepetition Loan Documents”), as more fully set forth in this Final Order;

(vii) the grant of adequate protection to each holder of a debenture (the “Senior Subordinated Notes”) under that certain Securities Purchase Agreement (the “Senior Subordinated Notes Agreement”), dated as of March 31, 2010 (as amended, restated, supplemented, or otherwise modified from time to time and in effect on the date hereof), between the Borrower, on one hand, and Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., and Marquette Capital Fund I, LP, on the other hand (collectively, the “Senior Subordinated Noteholders”) that executed a restructuring support agreement and has not and does not object to the relief requested by the Motion, on account of (i) the Debtor’s use of Cash Collateral and (ii) the priming of the liens and security interests held by the Senior Subordinated Noteholders under the Senior Subordinated Notes Agreement and all security agreements, pledge agreements, mortgages, deeds of trust, and other security and ancillary documents executed by the Borrower in favor of the Senior Subordinated Notes in connection therewith (collectively, the “Prepetition Senior Subordinated Note Collateral Documents” and, together with the Prepetition Senior Subordinated Note Credit Agreement, the “Prepetition Senior Subordinated Note Documents”), as more fully set forth in this Final Order;

(viii) the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral or the Prepetition Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code or other applicable law, and the grant of rights under section 552(b) of the Bankruptcy Code;

(ix) pursuant to Bankruptcy Rule 4001, an interim hearing on the Motion for this Court to consider entry of the Interim Order, which, among other things, (i) authorized Borrower to obtain from the DIP Lender under the DIP Facility an amount up to the Interim Borrowing Amount on an interim basis; (ii) authorized the Debtor to effectuate the Prepetition Facility Advance Repayment with the proceeds of the Interim Borrowing and, upon entry of this Final Order, the Prepetition Facility Term Loan Repayment; (iii) authorized the Debtor's use of the Cash Collateral; and (iv) granted the liens and claims provided for herein;

(x) a final hearing on the Motion no later than thirty-six (36) days following the Petition Date (as defined herein) to consider entry of this Final Order granting the relief requested in the Motion on a final basis;

(xi) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtor, the DIP Lender, the Prepetition Secured Lender, and the Senior Subordinated Noteholders to implement the terms of the Interim Order and this Final Order; and

(xii) waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of the Interim Order and this Final Order.

This Court having held an interim hearing on October 3, 2013 (the "Interim Hearing") and a final hearing on November 7, 2013 (the "Final Hearing") to consider the Motion and the relief requested therein; and after considering all of the pleadings filed with

this Court; and after considering all of the evidence presented on the record at the Interim Hearing and the Final Hearing, and having overruled all unresolved objections to the relief requested in the Motion; having found that, under the circumstances, due and sufficient notice of the Motion, the Interim Hearing, entry of the Interim Order and the Final Hearing was provided by the Debtor in accordance with Bankruptcy Rules 2002, 4001(b), 4001(c), 4001(d), and 9014 and all applicable Local Rules as set forth in the Interim Order and in Paragraph E below; and it appearing that approval of the relief requested in the Motion on a final basis is fair and reasonable and in the best interests of the Debtor, its estate, and all parties in interest, is a sound and prudent exercise of the Debtor's business judgment, and is essential for the continued operation of the Debtor's business and the preservation of the Debtor's assets; and after due deliberation and consideration, and good and sufficient cause appearing therefore:

BASED ON THE RECORD MADE AT THE INTERIM AND FINAL HEARINGS, THE COURT FINDS AS FOLLOWS:

A. **Petition Date.** On October 1, 2013 (the "Petition Date"), the Debtor filed a voluntary petition with this Court commencing the Chapter 11 Case. The Debtor is continuing to operate its business and manage its property as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. **Jurisdiction; Venue.** This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 503, 507, and 552 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001(b), and 9014 and Local Rule 4001-2. Venue of the Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Appointment of Committee.** On October 9, 2013, the Office of the United States Trustee for the Eastern District of Michigan (the “U.S. Trustee”) appointed a statutory committee of unsecured creditors (the “Committee”) in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code. [Docket No. 69]

D. **Interim Order.** Based on the Motion, the record at the Interim Hearing, and all relevant pleadings filed with this Court, the Court approved the Debtor’s entry into and performance under the DIP Credit Agreement and the other DIP Loan Documents on an interim basis as well as other requested interim relief and entered on October 3, 2013, the *Interim Order on First Day Motion (I) Authorizing the Debtor to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c), 364(d)(1), and 3654(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c), and (IV) Granting Related Relief* (the “Interim Order”). [Docket No. 37]

E. **Notice.** The Final Hearing was held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtor, in accordance with the requirements of the Interim Order, to certain parties in interest, including: (a) the Office of the United States Trustee for the Eastern District of Michigan, (b) the 20 largest non-insider unsecured creditors of the Debtor on a consolidated basis, (c) Kirkland & Ellis LLP, as counsel to the Prepetition Secured Lender and the DIP Lender, (d) holders of Senior Subordinated Notes, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, and (g) the United States Attorney for the Eastern District of Michigan. Under the circumstances, such notice of the Motion, the relief requested

therein, and the Final Hearing complies with Bankruptcy Rule 4001(b), (c), and (d) and the Local Rules, and no further notice of the relief sought at the Final Hearing is necessary or required.

F. **Debtor's Stipulations With Respect to Prepetition Obligations.**

Subject to the limitations thereon described below in Paragraph 17 the Debtor hereby admits, acknowledges, agrees, and stipulates that (collectively, the "Debtor's Stipulations"):

(i) as of the Petition Date, the Debtor was truly and justly indebted to the Prepetition Secured Lender pursuant to the Prepetition Loan Documents, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than (i)(a) \$15,719,001.64 outstanding under the Advances (as defined in the Prepetition Credit Agreement), and (b) \$851,947.44 outstanding under the Term Loan (as defined in the Prepetition Credit Agreement), including the CapEx Purchase Loan Amount, *plus* (ii) accrued and unpaid interest with respect thereto and any additional fees, costs, and expenses (including any attorneys', financial advisors', and other professionals' fees and expenses that are chargeable or reimbursable under the Prepetition Loan Documents) due under the Prepetition Loan Documents.

(ii) as of the Petition Date, the Debtor was truly and justly indebted to the Senior Subordinated Noteholders pursuant to the Prepetition Senior Subordinated Note Documents, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than \$7,000,000 outstanding under the Senior Subordinated Notes Agreement *plus* accrued and unpaid interest with respect thereto due under the Prepetition Senior Subordinated Note Documents.

All obligations of the Debtor arising under the Prepetition Loan Documents (including, without limitation, the "Obligations" as defined in the Prepetition

Credit Agreement) and the Prepetition Senior Subordinated Note Documents shall collectively be referred to herein as the “Prepetition Obligations”;

(iii) the liens and security interests granted to the Prepetition Secured Lender (collectively, the “Prepetition First Priority Liens”) in substantially all of the Debtor’s assets (the “Prepetition Collateral”) as more particularly described in the Prepetition Collateral Documents are (i) valid, binding, perfected, and enforceable first priority liens and security interests in the real and personal property described in the Prepetition Collateral Documents;² (ii) not subject to, pursuant to the Bankruptcy Code or other applicable law, avoidance, disallowance, reduction, recharacterization, recovery, subordination, attachment, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) subject and subordinate only to (A) the Carve-Out (as defined below), (B) the DIP Liens (as defined below), and (C) Permitted Liens (as defined in the Prepetition Credit Agreement) to the extent permitted under the Prepetition Credit Agreement to be senior and to the extent perfected, and the Debtor irrevocably waives, for itself and its subsidiaries and affiliates, any right to challenge or contest in any way the Prepetition First Priority Liens or the validity or enforceability under the Prepetition Obligations and the Prepetition Loan Documents;

(iv) the liens and security interests granted to the Senior Subordinated Noteholders (collectively, the “Prepetition Second Priority Liens”) in the Prepetition Collateral, as more particularly described in the Prepetition Senior Subordinated Note Documents are (i) valid, binding, perfected, and enforceable second priority liens and

² Nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtor, the DIP Lender, the Prepetition Secured Lender, and the Committee (to the extent conferred standing) to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any such liens and/or security interests.

security interests in the real and personal property described in the Prepetition Senior Subordinated Note Documents;³ (ii) not subject to, pursuant to the Bankruptcy Code or other applicable law, avoidance, disallowance, reduction, recharacterization, recovery, subordination, attachment, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) subject and subordinate only to (A) the Carve-Out (as defined below), (B) the DIP Liens (as defined below), (C) the Prepetition First Priority Liens, and (D) Permitted Liens (as defined in the Prepetition Credit Agreement) to the extent permitted under the Prepetition Credit Agreement to be senior and to the extent perfected, and the Debtor irrevocably waives, for itself and its subsidiaries and affiliates, any right to challenge or contest in any way the Prepetition Second Priority Liens or the validity or enforceability of the Prepetition Obligations under the Prepetition Senior Subordinated Note Documents;

(v) (a) the Prepetition Obligations constitute legal, valid, and binding Obligations of the Debtor; (b) no offsets, defenses, or counterclaims to the Prepetition Obligations exist; (c) no portion of the Prepetition Obligations is subject to avoidance, disallowance, reduction, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Prepetition Loan Documents are valid and enforceable by the Prepetition Secured Lender against the Debtor; (e) the Senior Subordinated Notes are valid and enforceable by the Senior Subordinated Noteholders against the Debtor; (f) the Prepetition Obligations constitute allowed claims against the Debtor’s estate; and (g) no claim of or cause of action held by the Debtor or its estate exists against the Prepetition

³ Nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtor, the DIP Lender, the Prepetition Secured Lender, and the Committee (to the extent conferred standing) to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any such liens and/or security interests.

Secured Lender or the Senior Subordinated Noteholders, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Prepetition Loan Documents or the Prepetition Senior Subordinated Note Documents (or the respective transactions contemplated thereunder), Prepetition Obligations, Prepetition First Priority Liens, or Prepetition Second Priority Liens, including without limitation, any right to assert any disgorgement or recovery; and

(vi) all of the Debtor's cash, including any cash in the deposit accounts, wherever located, constitutes Cash Collateral of the Prepetition Secured Lender and the Senior Subordinated Noteholders.

G. **Budget for DIP Facility.** Attached hereto as Exhibit B is a cash flow forecast setting forth all projected cash receipts and cash disbursements (by line item) on a weekly basis (the "Supplemental Approved Budget") for the 13-week period beginning on October 25, 2013. The Supplemental Approved Budget is required to be updated periodically and may be modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods) prepared by the Debtor and approved by the DIP Lender, without subsequent notice to or order of the Court (the Supplemental Approved Budget and each such subsequent budget (once approved by the DIP Lender), the "Approved Budget"), in accordance with the terms of the DIP Credit Agreement, provided that the Committee shall be promptly provided with a copy of any Approved Budget. The Supplemental Approved Budget is an integral part of this Final Order and has been relied upon by the DIP Lender and the Prepetition Secured Lender in consenting to this Final Order, to

provide the DIP Facility and to permit the use of the Cash Collateral. The Debtor represents and warrants to the DIP Lender, the Prepetition Secured Lender and this Court that the Approved Budget includes and contains the Debtor's best estimate of all operational receipts and all operational disbursements, fees, costs, and other expenses that will be payable, incurred, and/or accrued by the Debtor during the period covered by the Approved Budget and that such operational disbursements, fees, costs, and other expenses will be timely paid in the ordinary course of business pursuant to and in accordance with the Approved Budget unless such operational disbursements, fees, costs, and other expenses are not incurred or otherwise payable. The Debtor further represents that the Supplemental Approved Budget is achievable and will allow the Debtor to operate in the Chapter 11 Case and pay postpetition administrative expenses as they come due. In accordance with the DIP Credit Agreement, the Debtor shall be required to provide to the DIP Lender and the Committee a weekly report of actual cash receipts and disbursements on a consolidated basis (each, a "Weekly Actuals Report") and a weekly variance report (the "Budget Variance Report") comparing the actual cash receipts and disbursements and variances from the Approved Budget of the Debtor for the prior four-week period. The Debtor shall be permitted a variance between projected receipts and actual receipts of fifteen (15) percent, and between projected disbursements and actual disbursements of fifteen (15) percent, on a line item basis for each four-week period.

H. Immediate Need for Funding. Based upon the pleadings and proceedings of record in the Chapter 11 Case, the Debtor does not have sufficient available sources of working capital and financing to carry on the operation of its business without the DIP Facility and authorized use of Cash Collateral. As a result of the Debtor's financial condition, the use of Cash Collateral alone will be insufficient to meet the Debtor's immediate postpetition

liquidity needs. The Debtor's ability to maintain business relationships with its vendors, suppliers, and customers, pay its employees, purchase, and supply new inventory, and otherwise finance its operations is essential to the Debtor's continued viability. In the absence of the DIP Facility and the authority of this Court to use Cash Collateral, the Debtor's business and estate would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of its operations. The preservation, maintenance, and enhancement of the going concern value of the Debtor are of the utmost significance and importance to a successful restructuring of the Debtor under chapter 11 of the Bankruptcy Code.

I. **No Credit on More Favorable Terms.** Based upon the pleadings and proceedings of record in the Chapter 11 Case, the Debtor is unable to obtain sufficient interim and long-term financing from sources other than the DIP Lender on terms and subject to conditions more favorable than under the DIP Facility and the DIP Loan Documents, and is not able to obtain adequate unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtor is also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtor (i) granting to the DIP Lender, subject to the Carve-Out as provided herein, (x) the DIP Super-Priority Claims (as defined below) and (y) the DIP Liens in the DIP Collateral, as provided herein and in the DIP Loan Documents, (ii) agreeing to the Prepetition Facility Advance Repayment and, upon entry of a Final Order, the Prepetition Facility Term Loan Repayment, and (iii) providing the Prepetition Secured Lender the adequate protection as provided herein.

J. **Reasonable; Good Faith.** The DIP Lender has indicated a willingness to provide Borrower with post-petition secured financing but solely on the terms and conditions set

forth in the Interim Order prior to the date of entry of this Final Order, and on the terms and conditions set forth in this Final Order thereafter and the DIP Loan Documents. After considering all of its alternatives, the Debtor has concluded, in an exercise of its sound business judgment, that the DIP Facility being provided by the DIP Lender and the authorization to use the Cash Collateral being provided by the Prepetition Secured Lender continues to represent the best financing presently available to the Debtor. Based upon the pleadings and proceedings of record in the Chapter 11 Case, (i) the terms and conditions of the DIP Facility and the continued use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Final Order and the DIP Loan Documents are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and constitute reasonably equivalent value and fair consideration, (ii) the DIP Facility has been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtor and the DIP Lender, and (iii) any credit extended, loans made, and other financial accommodations extended to the Debtor by the DIP Lender have been extended, issued, or made, as the case may be, by the DIP Lender in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. The Debtor has requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief sought by this Final Order, the Debtor's estate will be immediately and irreparably harmed. Continued access to the DIP Facility and continued authorization of the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Final Order and the DIP Loan Documents continue to be in the best interests of the Debtor's estate and are consistent with the Debtor's fiduciary duties.

K. **Use of Cash Collateral.** A continuing need exists for the Debtor to use the Cash Collateral (in addition to the DIP Facility) to continue to operate its business, pay

wages, maintain business relationship with vendors, suppliers, and customers, make capital expenditures, make adequate protection payments, and generally conduct its business affairs so as to avoid immediate and irreparable harm to its estate and the value of its assets.

L. **Consent by Prepetition Secured Lender.** The Prepetition Secured Lender has consented to, conditioned on the entry of this Final Order (i) the financing arrangements contemplated by the Interim Order, this Final Order, and the DIP Loan Documents and (ii) Debtor's proposed use of Cash Collateral, on the terms and conditions set forth in the Interim Order, this Final Order, and the DIP Credit Agreement.

M. **Adequate Protection.** The adequate protection provided to the Prepetition Secured Lender and to the Senior Subordinated Noteholders for any diminution in the value of the Prepetition Secured Lender's or the Senior Subordinated Noteholders' respective interests in the Prepetition Collateral from and after the Petition Date, including, without limitation, from the DIP Facility and use of the Cash Collateral, pursuant to the provisions of this Final Order, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtor to protect the Prepetition Secured Lender's and the Senior Subordinated Noteholders' respective interests in the Prepetition Collateral in accordance with sections 361, 362, 363, and 364 of the Bankruptcy Code. The consent of the Prepetition Secured Lender to the priming of its liens by the DIP Liens does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition Secured Lender that its interests in the Prepetition Collateral are adequately protected pursuant to this Interim Order or otherwise. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Prepetition Secured Lender and the Senior Subordinated

Noteholders from the diminution in value of their respective interests in the Prepetition Collateral and (ii) obtain the foregoing consents and agreements.

N. **Good Cause Shown; Best Interest.** The Debtor has requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). This Court concludes that good cause has been shown and that entry of this Final Order is in the best interest of the Debtor's estate and creditors as its implementation will, among other things, allow for the continued operation of the Debtor's existing business and enhance the Debtor's prospects for a successful reorganization.

O. **No Liability to Third Parties.** The Debtor stipulates and the Court finds that in making decisions to advance loans to the Debtor, in administering any loans, in permitting the Debtor to use Cash Collateral, in accepting the Supplemental Approved Budget or any future Supplemental Approved Budget, or in taking any other actions permitted by the Interim Order, this Final Order, or the DIP Loan Documents, the DIP Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor.

P. **Section 552.** In light of the subordination of its liens and super-priority administrative claims (i) in the case of the DIP Lender, to the Carve-Out and the Non-Primed Liens and (ii) in the case of the Prepetition Secured Lender to the Carve-Out, the DIP Liens, and the Non-Primed Liens, the DIP Lender and Prepetition Secured Lender each are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply.

Based on the foregoing, and upon the record made before this Court at the Final Hearing, and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. **Final Approval of the Motion.** The Motion is approved on a final basis on the terms and conditions set forth in this Final Order. Any objections that have not previously been withdrawn are hereby overruled. This Final Order shall become effective immediately upon its entry.

2. **Ratification of the Interim Order.** The Interim Order is hereby ratified and confirmed and all DIP Obligations incurred and borrowings and payments made and protections afforded to the DIP Lender and to any other party pursuant to the Interim Order are ratified and confirmed on a final basis and shall be deemed made in accordance with and pursuant to this Final Order.

3. **Approval of DIP Loan Documents; Authority Thereunder.** The DIP Loan Documents are hereby approved on a final basis. The Debtor's execution and delivery hereby is confirmed on a final basis, and on such execution and delivery, the Debtor is directed to continue to perform all of its obligations under, the DIP Loan Documents, including the DIP Credit Agreement, which is approved on a final basis and incorporated herein by reference, and such additional documents, instruments, and agreements as may be required or requested by the DIP Lender pursuant to the DIP Credit Agreement to implement the terms or effectuate the purposes of this Final Order. The Debtor is authorized to continue to comply with and continue to perform all of the terms and conditions contained therein, and directed to repay amounts borrowed, together with interest, fees (including, without limitation, the fees set forth in the DIP Credit Agreement) and premiums (as applicable) thereon and any other outstanding DIP Obligations to the DIP Lender in accordance with and subject to the terms and conditions set

forth in the DIP Loan Documents and this Final Order. In the event of any inconsistency between the DIP Loan Documents and this Final Order, this Final Order shall control.

4. Authorization to Borrow/Use Cash Collateral. Pursuant to this Final Order, the DIP Credit Agreement, and the other DIP Loan Documents, (a) the Borrower is authorized on a final basis to borrow under the DIP Facility up to the maximum principal amount of \$27 million, and (b) the Borrower is authorized and directed on a final basis to cause the Prepetition Facility Advance Repayment to occur on a dollar-for-dollar basis from Cash Collateral received by the Borrower on account of accounts receivable that are paid following the entry of this Interim Order, in each case subject to the terms and conditions of this Final Order and the DIP Loan Documents. The Debtor is authorized on a final basis to use the proceeds of the DIP Facility and the Cash Collateral in the operation of the Debtor's business and to make the Prepetition Facility Advance Repayment, provided, that any proposed use of proceeds of the DIP Facility or use of Cash Collateral is consistent with the terms of the DIP Loan Documents, the Approved Budget, and this Final Order. Authorization to use Cash Collateral and any commitment to fund additional DIP Obligations under the DIP Facility will terminate pursuant to the terms of the DIP Credit Agreement or this Final Order. In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized on a final basis, and the automatic stay imposed by section 362 of the Bankruptcy Code is lifted, subject to Paragraph 24 hereof, to the extent necessary, to perform all acts and to make, execute, and deliver all instruments and documents and to pay all fees that may be reasonably required or necessary for the Debtor's performance of its obligations under the DIP Loan Documents and this Final Order, including, without limitation:

a. The execution, delivery, and performance of the DIP Loan Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage contemplated thereby;

b. The execution, delivery, and performance of one or more amendments, waivers, consents, or other modifications to and under the DIP Loan Documents, it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the DIP Loan Documents or the DIP Obligations; provided, however, that any material modification or amendment shall require Court approval and notice of any modification or amendment to the DIP Loan Documents shall be provided to counsel to the Committee, to the U.S. Trustee, and to the Prepetition Secured Lender, each of whom shall have fourteen (14) days from the date of such notice within which to object in writing to such modification or amendment, subject to the Debtor's right to seek expedited relief and if the Committee or the U.S. Trustee timely objects to any modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of this Court;

c. The non-refundable payment to the DIP Lender and the Prepetition Secured Lender of the fees and costs and expenses provided for under the DIP Loan Documents, the Prepetition Credit Agreement, and this Final Order, as may be due from time to time, including, without limitation, fees and expenses of Kirkland & Ellis LLP and Pepper Hamilton LLP (together, the "Lenders' Counsel"), as co-counsel to DIP Lender and the Prepetition Secured Lender (together, the "Lenders"), as provided for in the DIP Loan Documents, the Prepetition Credit Agreement, and this Final Order, which

fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court; provided, however, that copies of any invoices (in summary form and redacted, as necessary, to protect any applicable privilege) with respect to such fees, costs, and expenses shall be provided to the U.S. Trustee and counsel to any Committee, and each such party shall have fourteen (14) days from the date of such notice within which to object in writing to such payment;

d. Each borrowing under the DIP Facility up to the maximum principal amount in accordance with the terms hereof;

e. The making of the Prepetition Facility Term Loan Repayment;

f. The making of the adequate protection payments provided for in this Final Order; and

g. The performance of all other acts required under or in connection with the DIP Loan Documents.

5. Termination Event. The Debtor's authority to use the proceeds of the DIP Facility or any Prepetition Collateral, including Cash Collateral, and any commitment to fund DIP Obligations under the DIP Facility, shall each terminate upon (unless, for each subpart of this Paragraph 5, consented to by the DIP Lender) the earliest of (each a "Termination Event"):

a. 110 days following the Closing Date (as defined in the DIP Credit Agreement);

b. The date of acceleration of any outstanding borrowings under the DIP Facility pursuant to an Event of Default (as defined in the DIP Credit Agreement);

- c. Conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the DIP Lender;
- d. Dismissal of the Chapter 11 Case, unless otherwise consented to in writing by the DIP Lender;
- e. The effective date of the Debtor's plan of reorganization confirmed in the Chapter 11 Case;
- f. The occurrence of a Senior Lender Termination Event (as defined in any RSA).

6. Perfection in Cash. Subject to the Carve Out and other provisions of this Final Order, all financial institutions in which the Debtor's accounts are located are authorized and directed to comply with any request of the DIP Lender to turn over to the DIP Lender all funds therein without offset or deduction of any kind. The Debtor is directed to enter into such blocked account agreements with springing cash dominion with the DIP Lender and such financial institutions as the DIP Lender may require, or alternatively, the DIP Lender may enjoy the benefit of all control agreements to which the Prepetition Secured Lender is a party without the need to enter into new blocked account agreements.

7. Interest on DIP Facility. The rates of interest to be charged for DIP Obligations funded to the Debtor pursuant to the DIP Credit Agreement shall be the rates set forth in the DIP Credit Agreement and shall be payable at the times set forth in the DIP Credit Agreement.

8. Payment of DIP Fees and Expenses. The Debtor is authorized and directed on a final basis to pay (i) all fees when due under the DIP Credit Agreement (including, without limitation, any fees provided for under the DIP Credit Agreement) in the amounts set

forth in the DIP Credit Agreement and (ii) costs, expenses, and any other fees or other amounts payable under the terms of the DIP Loan Documents and all other reasonable, documented, out-of-pocket costs, and expenses of the DIP Lender in accordance with the terms of the DIP Loan Documents (including, without limitation, the reasonable, documented, out-of-pocket prepetition and postpetition fees, costs, and expenses of the Lenders' Counsel). None of such fees, costs, and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court. Copies of any invoices (in summary form and redacted, as necessary, to protect any applicable privilege) with respect to such fees, costs, and expenses shall be provided to the U.S. Trustee and counsel to the Committee, and each such party shall have fourteen (14) days from the date of such notice within which to object in writing to such payment. In addition, the Debtor continues to be, and is hereby, authorized and directed, on a final basis, to indemnify the DIP Lender (and its affiliates, as well as each such parties' directors, officers, employees, agents, representatives, attorneys, consultants, advisors, and controlling persons) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents; provided that the Debtor shall not have any obligation to indemnify or hold harmless any indemnified party with respect to any matter arising from the gross negligence or willful misconduct of such indemnified party, as determined by a court of competent jurisdiction in a final non-appealable order. All such unpaid fees, costs, and expenses and indemnities of the DIP Lender shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under the Interim Order, this Final Order, and the DIP Loan Documents.

9. Validity of DIP Loan Documents. The DIP Loan Documents shall constitute, and are hereby deemed to be the legal, valid, and binding obligations of the Debtor, enforceable against the Debtor in accordance with the terms of the DIP Loan Documents and the terms of this Final Order for all purposes during the Chapter 11 Case, in any subsequently converted Chapter 11 Case of the Debtor under chapter 7 of the Bankruptcy Code or after dismissal of the Chapter 11 Case. Upon entry of this Final Order, proceeds of the DIP Facility shall be applied only to fund postpetition administrative expenses, the Debtor's working capital, the Prepetition Facility Term Loan Repayment, and to pay such other amounts as are required or permitted to be paid pursuant to the DIP Credit Agreement, the Interim Order, this Final Order, and any other orders of this Court, all subject to and in accordance with the Approved Budget. Except as set forth in this Final Order, no obligation, payment, transfer, or grant of security under the DIP Loan Documents, the Interim Order, or this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including, without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

10. DIP Super-Priority Claims. In accordance with Bankruptcy Code sections 364(c)(1), the DIP Obligations shall constitute super-priority administrative expense claims (the "DIP Super-Priority Claims") against the Debtor with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims of the kinds specified or ordered pursuant

to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; provided, however, that the DIP Super-Priority Claims shall be subject to the Carve-Out (as defined below). The DIP Super-Priority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against the Debtor, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof (not including Avoidance Actions Proceeds or D&O Proceeds). Except as set forth in this Final Order, no other super-priority claims shall be granted or allowed in this Chapter 11 Case.

11. DIP Liens. As security for the DIP Obligations, the DIP Lender was granted pursuant to the Interim Order, the DIP Liens (as defined below). Pursuant to this Final Order, the grant of the DIP Liens to the DIP Lender is ratified on a final basis, which liens shall be subject and subordinate only to the Carve-Out, (without the necessity of the execution by the Debtor (or recordation or other filing), security agreements, lock box or control agreements, pledge agreements, financing statements, intellectual property filings, mortgages, any other similar instruments, or the possession and control by the DIP Lender of any property or otherwise) valid, binding and fully perfected, security interests in, and liens upon (the “DIP Liens”) all present and after-acquired property of the Debtor of any nature whatsoever (including, without limitation, “Collateral” (as defined in the DIP Credit Agreement)), and all cash and cash equivalents contained in any account maintained by any of the Debtor (but not, for

the avoidance of doubt, the Avoidance Actions (as defined herein), the Avoidance Actions Proceeds of the Debtor or its estate, the D&O Actions (as defined herein) or the D&O Proceeds of the Debtor or its estate) (collectively, with all proceeds and products of any or all of the foregoing, the “DIP Collateral” and, together with the Prepetition Collateral, the “Collateral”), such DIP Liens to consist of:

a. First Lien on Cash Balances and Unencumbered Property.

Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Debtor’s right, title, and interest in, to and under all DIP Collateral that is not otherwise encumbered by a validly perfected security interest or lien on the Petition Date (collectively, the “Unencumbered Property”); provided, however, that Unencumbered Property shall not include (i) the Debtor’s claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code (collectively, “Avoidance Actions”), (ii) any proceeds of the Avoidance Actions or property received thereby (collectively, the “Avoidance Actions Proceeds”), (iii) the Debtor’s claims and causes of action (collectively, the “D&O Actions”) under its directors and officers insurance policies (collectively, the “D&O Policies”), or (iv) any proceeds of the D&O Actions or property received thereby (collectively, the “D&O Proceeds”).

b. Liens Priming the Prepetition Secured Lender’s Liens. Pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority, senior, priming, perfected lien and security interest upon all of the Debtor’s right, title, and interest in, to and under all DIP Collateral that is subject to any existing lien presently securing the Prepetition

Obligations, subject only to Non-Primed Liens (as defined below). Such security interest shall be senior to and prime the security interests and liens of the Prepetition Secured Lender on account of the Prepetition Obligations and the Adequate Protection Liens (as defined below) granted to the Prepetition Secured Lender, but shall be junior to any Non-Primed Liens on such property.

c. Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest (other than as set forth in clause (d) below) upon all of the Debtor's right, title, and interest in, to and under all DIP Collateral (other than the property described in clause (a) or (b) of this Paragraph 11, as to which liens and security interests in favor of the DIP Lender will be as described in such clauses), whether now existing or hereafter acquired, that is subject to (A) any validly perfected security interest or lien in existence as of the Petition Date that is not subject to section 552(a) of the Bankruptcy Code, or (B) any valid security interest or lien perfected (but not granted) after the Petition Date (to the extent such perfection in respect of a pre-Petition Date claim is expressly permitted under the Bankruptcy Code) that is not subject to section 552(a) of the Bankruptcy Code, in each case that is senior in priority to the Prepetition First Priority Liens (the "Non-Primed Liens").

d. Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any

federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtor, or (iii) any intercompany or affiliate liens of the Debtor.

12. Prepetition Secured Lender Adequate Protection. Until the indefeasible repayment of the Prepetition Obligations, the Prepetition Secured Lender is entitled pursuant to sections 361, 363(c), and 364(d)(1) of the Bankruptcy Code to adequate protection of its interest in the Prepetition Collateral for and equal in amount to the aggregate diminution in the value thereof as a result of (a) the provisions of this Final Order granting first priority and/or priming liens on such Prepetition Collateral to the DIP Agent for the benefit of the DIP Lender; (b) authorizing the use of Cash Collateral; (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; or (d) otherwise, pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code. The Prepetition Secured Lender was granted by the Interim Order and is hereby granted on a final basis, solely to the extent of the diminution in value of the Prepetition First Priority Liens in the Prepetition Collateral from and after the Petition Date, the following (collectively, the “Prepetition Adequate Protection Obligations”):

a. Adequate Protection Liens. The Prepetition Secured Lender was granted, pursuant to the Interim Order, valid, enforceable, unavoidable, and fully perfected replacement liens and security interests in all Collateral (but not, for the avoidance of doubt, the Avoidance Actions, Avoidance Actions Proceeds, D&O Actions, or D&O Proceeds), to the extent of any diminution in the Prepetition Secured Lender’s interest in the Prepetition Collateral, which shall be junior to the DIP Liens and Non-Primed Liens and subject and subordinate to the Carve-Out (the “Prepetition Adequate Protection Liens”). Pursuant to this Final Order, the grant of Prepetition Adequate Protection Liens to the Prepetition Secured Lender is ratified on a final basis, which liens

shall be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Case. Except as otherwise set forth in this Paragraph 12 or otherwise in this Final Order, the Prepetition Adequate Protection Liens shall not be subordinated or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise. The Prepetition Adequate Protection Liens were deemed to have been perfected automatically upon the entry of the Interim Order and continue to be perfected, without the necessity of filing of any UCC-1 financing statement, state or federal notice, mortgage or other similar instrument or document in any state or public record or office and without the necessity of taking possession or control of any collateral.

b. Super-Priority Claims. The Prepetition Secured Lender was granted, pursuant to the Interim Order, super-priority administrative expense claims (the “Prepetition Super-Priority Claims”) under sections 503 and 507 of the Bankruptcy Code against the Debtor’s estate (but not, for the avoidance of doubt, Avoidance Actions Proceeds or D&O Proceeds) to the extent that the Adequate Protection Liens do not adequately protect against the diminution in value of the Prepetition Collateral, which Prepetition Super-Priority Claims, if any, shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, and 1114, or otherwise and including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code; provided that at all times while such claim is in full force and

effect pursuant to this Final Order, the Prepetition Super-Priority Claims shall be junior in all respects to the DIP Super-Priority Claims and the Carve-Out.

c. Fees and Expenses. The Prepetition Secured Lender is hereby granted and shall receive payments in cash from the Debtor on a current basis of all fees, costs, and expenses payable to the Prepetition Secured Lender under the Prepetition Credit Agreement as in effect on the Petition Date (the “Prepetition Secured Professional Fee Payments”), including but not limited to, the reasonable fees and disbursements of the Lenders’ Counsel, promptly upon receipt of written invoices therefor (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing motions or fee applications, including such amounts arising (A) before the Petition Date and (B) after the Petition Date to the extent such amounts arise in connection with the Chapter 11 Case; provided, however, that none of such fees, costs, and expenses shall be subject to Court approval or U.S. Trustee guidelines, and the Prepetition Secured Lender shall not be required to file with respect thereto any interim or final fee application with this Court; provided further, however, that copies of any invoices (in summary form and redacted, as necessary, to protect any applicable privilege) with respect to such fees, costs, and expenses shall be provided to the U.S. Trustee, counsel to the Committee, and the Prepetition Secured Lender, and each such party shall have fourteen (14) days from the date of such notice within which to object in writing to such payment; provided, however, that if the Prepetition Secured Lender is determined by final order to be undersecured, such Prepetition Secured Professional Fee Payments shall be applied to outstanding obligations under the Prepetition Credit Agreement.

d. Interest. The Prepetition Secured Lender is hereby granted on a final basis and shall receive (a) payments in cash from the Debtor on a current basis of all accrued and unpaid interest and fees at the non-default contract rate owing under the Prepetition Credit Agreement immediately prior to the Petition Date, and (b) current monthly payments of postpetition interest (at the Base Rate plus the Applicable Margin) (each term as defined in the Prepetition Credit Agreement)) when due and payable under the Prepetition Credit Agreement (together, the “Prepetition Adequate Protection Interest Payments”); provided, however, that if the Prepetition Secured Lender is determined by final order to be undersecured, such Prepetition Adequate Protection Interest Payments shall be applied to outstanding obligations under the Prepetition Credit Agreement.

e. Financial Reporting. The Debtor shall provide the Prepetition Secured Lender and the Committee with the financial and other reporting as described in the DIP Credit Agreement (the “Periodic Reporting Materials”).

f. Right to Seek Additional Adequate Protection. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Lender to request additional forms of adequate protection at any time or the rights of the Debtor or any other party to contest such request; provided, however, that any such further or different adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Lender granted under this Order and the DIP Loan Documents.

13. Senior Subordinated Noteholder Adequate Protection. Senior Subordinated Noteholders shall (x) receive the Periodic Reporting Materials, and (y) be granted on a final basis valid, enforceable, unavoidable, and fully perfected replacement liens and

security interests in all Collateral solely to the extent of any diminution in the value of the Subordinated Noteholders' interests in the Prepetition Collateral (the "Senior Subordinated Noteholder Adequate Protection Liens"), subordinate to the Carve-Out, the DIP Liens, and the Prepetition Adequate Protection Liens. The Senior Subordinated Noteholder Adequate Protection Liens were deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Case. Subject to section 510(a) of the Bankruptcy Code and any subordination agreement by and among the Prepetition Secured Lender and the Senior Subordinated Noteholders, the Senior Subordinated Noteholder Adequate Protection Liens shall be *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise. The Senior Subordinated Noteholder Adequate Protection Liens were deemed to have been perfected automatically upon the entry of the Interim Order and continue to be perfected, without the necessity of filing of any UCC-1 financing statement, state or federal notice, mortgage or other similar instrument or document in any state or public record or office and without the necessity of taking possession or control of any collateral.

14. No Waiver of Prepetition Credit Agreement Provisions; Reservation of Rights. Except as otherwise specifically provided in this Final Order, nothing contained in this Final Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Prepetition Credit Agreements by the Prepetition Secured Lender, including, but not limited to, the incurrence or issuance of any indebtedness by the Debtor, the incurrence of any lien in connection therewith or the making of any payment by the Debtor.

15. Carve-Out. To the extent unencumbered funds are not immediately available to pay administrative expenses in full, the DIP Liens, DIP Super-Priority Claims, Prepetition Super-Priority Claims, Adequate Protection Liens, and all liens, claims, and other

security interests (“Prepetition Liens”) held by any party, including the DIP Lender, the Prepetition Secured Lender and the Senior Subordinated Noteholder on account of any obligations, including the Prepetition Obligations, shall each be subject to the “Carve-Out,” which shall be defined as the sum of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 plus interest at the statutory rate (without regard to the notice set forth in clause (iii) below); (ii) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iii) below); (iii) to the extent allowed or authorized by the Bankruptcy Court to be paid at any time, whether by interim order, procedural order, or otherwise, all accrued and unpaid fees and expenses (the “Professional Fees”) of persons or firms retained by the Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code and the Committee (collectively, “Professionals”) incurred at any time before or on the first Business Day (as defined in the DIP Credit Agreement) following delivery by the DIP Lender to the Debtor, its counsel, the U.S. Trustee, and lead counsel to the Committee of a written notice, which may be delivered following the occurrence and during the continuance of an Event of Default under the DIP Facility, seeking relief from the automatic stay to foreclose upon the DIP Collateral (a “Carve-Out Trigger Notice”), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Professional Fees incurred after the first Business Day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed or authorized by the Bankruptcy Court to be paid at any time, whether by interim order, procedural order, or otherwise, in an aggregate amount not to exceed \$400,000; provided, however, that no portion of the Carve-Out, proceeds of the DIP Facility, DIP Collateral, Prepetition Collateral, or Cash Collateral shall include, apply to, or be

available for any fees, costs, or expenses incurred by any party, including the Debtor or the Committee or any Professionals engaged thereby, in connection with (x) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against any of the DIP Lender or the Prepetition Secured Lender, including, without limitation, (a) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Obligations, DIP Super-Priority Claims or DIP Liens, (b) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Obligations, Prepetition Super-Priority Claims or Prepetition Liens or (y) asserting any claims or causes of action, including, without limitation, claims or actions to hinder or delay the DIP Lender's assertion, enforcement, or realization on the DIP Collateral in accordance with the DIP Loan Documents, the Interim Order, or this Final Order. Nothing contained herein is intended to constitute, nor should be construed as consent by any party to, the allowance of any Professional's fees, costs, or expenses and shall not affect the right or ability of any party in interest to object to the allowance and payment of any fees, expenses, reimbursement, or compensation described in clauses (ii), (iii), and (iv) above. The aggregate amount set forth under clauses (i), (ii), (iii) and (iv) above from time to time shall be referred to as the "Carve-Out Cap."

16. Financial Reporting to the Committee. The Debtor shall provide the Committee with the financial and other reporting required by the DIP Credit Agreement to be provided to the DIP Lender, subject to the members of the Committee entering into non-disclosure arrangements acceptable to the Debtor.

17. Investigation Rights. The Committee shall have until November 23, 2013 (the "Investigation Termination Date") to investigate the validity, perfection, and

enforceability of the Prepetition Liens and the Prepetition Obligations, or to assert any other claims or causes of action against the Prepetition Secured Lender. If the Committee or any non-debtor party-in-interest, subject to having obtained the requisite standing, determines that there may be a challenge to the Prepetition Secured Lender by the Investigation Termination Date, then upon three (3) days' written notice to the Debtor and the Prepetition Secured Lender, such Committee shall be permitted to file and prosecute an objection or claim related thereto (each, a "Challenge"), and shall have only until the applicable Investigation Termination Date to file such objection or otherwise initiate an appropriate action on behalf of the Debtor's estate setting forth the basis of any such challenge, claim, or cause of action; provided, however, that nothing contained in the DIP Loan Documents, the Interim Order, or this Final Order shall be deemed to confer standing on the Committee or any other party in interest to commence a Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: (a) the agreements, acknowledgements, and stipulations contained in Paragraph F of this Final Order, shall be deemed to be immediately and irrevocably binding on the Debtor and the Debtor's estate, the Committee, all parties-in-interest and any and all successors-in-interest as to any of the foregoing, and the Committee and any other party-in-interest and any and all successors-in-interest thereto, shall thereafter be forever barred from bringing any Challenge; (b) the liens and security interests of the Prepetition Secured Lender and the Senior Subordinated Noteholders shall be deemed to constitute valid, binding, enforceable, and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (c) the Prepetition Obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Case and any subsequent chapter 7 case, in the amounts set

forth in Paragraph F and shall not be subject to challenge by any party-in-interest as to validity, priority, or otherwise; and (d) the Debtor shall be deemed to have released, waived, and discharged the Prepetition Secured Lender (whether in its prepetition or postpetition capacity), together with its respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns, and/or successors, from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Prepetition Obligations or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the Prepetition Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, or enforceability of the Prepetition Liens or the Prepetition Obligations, any claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action. Notwithstanding anything to the contrary herein: (a) if any such Challenge is timely commenced, the stipulations contained in Paragraph F of this Final Order shall nonetheless remain binding on all parties-in-interest and preclusive except to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (b) the Prepetition Secured Lender reserves all of its rights to contest on any grounds any Challenge. For the avoidance of doubt, any trustee appointed or elected in this case shall, until the Investigation Termination Date (and thereafter, if a Challenge is commenced by the Investigation Termination Date) for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor's estate), be deemed to be a party other than the Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, and stipulations of the Debtor in this Order.

18. Protection of DIP Lender's Rights. So long as there are any amounts outstanding under the DIP Credit Agreement or any other DIP Obligations are outstanding, the Prepetition Secured Lender (i) shall not take any action to foreclose upon or recover in connection with its liens and security interests, other agreements, or operation of law of this Final Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect its security interest in the DIP Collateral unless, solely as to this clause (iii), the DIP Lender files financing statements or other documents to perfect the liens granted pursuant to the Interim Order, this Final Order, or the DIP Loan Documents, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date, and (iv) not seek to terminate or modify the use of Cash Collateral.

19. Dispositions of Collateral. In the event of any sale, lease, or other disposition of any DIP Collateral (a "Collateral Disposition"), the Debtor shall, as a condition to approval of such Collateral Disposition, to the extent required by the DIP Credit Agreement, immediately pay, or cause to be paid to, the DIP Lender all of the proceeds of such Collateral Disposition for application to the DIP Obligations and shall comply with all other provisions in the DIP Loan Documents and this Final Order in connection with any such Collateral Disposition. All such proceeds of any Collateral Disposition shall be applied in accordance with the terms and conditions of the DIP Credit Agreement.

20. Further Assurances. The Debtor shall execute and deliver to the DIP Lender and the Prepetition Secured Lender and the Senior Subordinated Noteholders, all such agreements, financing statements, instruments, and other documents as the Lenders may reasonably request to evidence, confirm, validate, or evidence the perfection of the DIP Liens or the Adequate Protection Liens granted pursuant hereto. Further, the Debtor is authorized and directed to do and perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, pledge agreements, control agreements, mortgages, and financing statements), and shall pay fees and expenses that may be required or necessary for the Debtor's performance under the DIP Loan Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs, and other expenses described in the DIP Loan Documents as such become due.

21. 506(c) Waiver. Except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Prepetition Collateral, or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lender or the Prepetition Secured Lender, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender or the Prepetition Secured Lender.

22. Restrictions on Granting Post-Petition Liens. Other than the Carve-Out, or as otherwise provided in this Final Order or the DIP Credit Agreement, no claim having a priority superior or *pari passu* with those granted by the Interim Order or this Final Order to the

DIP Lender and the Prepetition Secured Lender shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Case, while any portion of the DIP Facility (or refinancing thereof), any DIP Loan, or any other DIP Obligations are outstanding. Except as expressly permitted by this Final Order and the DIP Loan Documents, the Debtor will not, at any time during the Chapter 11 Case, grant mortgages, security interests, or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise. Unless all DIP Obligations shall have indefeasibly been paid in full in cash (or as otherwise provided in this Final Order and the DIP Loan Documents), and the Adequate Protection Obligations shall have been indefeasibly paid in cash in full, the Debtor shall not seek, and it shall constitute an Event of Default (as defined in the DIP Credit Agreement) and terminate the right of the Debtor to use Cash Collateral under this Final Order if the Debtor seeks, or if there is entered, (i) any modification of this Final Order without the prior written consent of the DIP Lender (or, to the extent the DIP Obligations shall have been indefeasibly paid in full in cash (or otherwise fully satisfied as provided in this Final Order and the DIP Loan Documents), the Prepetition Secured Lender), and no such consent shall be implied by any other action, inaction, or acquiescence, or (ii) an order converting or dismissing the Chapter 11 Case.

23. Automatic Effectiveness of Liens. The DIP Liens and Adequate Protection Liens shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable, and effective by operation of law as of the Petition Date, having the priority set forth in Paragraphs 11 and 12 of this Final Order, without any further action by the Debtor, the DIP Lender or the Prepetition Secured Lender and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements,

vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office or the Library of Congress, or other documents or the taking of any other actions. All DIP Collateral shall be free and clear of other liens, claims, and encumbrances, except as permitted in the DIP Loan Documents and this Final Order. If the DIP Lender or the Prepetition Secured Lender hereafter request that the Debtor execute and deliver to the DIP Lender or the Prepetition Secured Lender financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtor is hereby directed to execute and deliver such financing statements, security agreements, mortgages, collateral assignments, instruments, and documents, and the DIP Lender and the Prepetition Secured Lender are hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order.

24. Automatic Stay. As provided herein, subject only to the provisions of the DIP Credit Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Lender to exercise, upon the occurrence and during the continuance of any Event of Default (as defined in the DIP Credit Agreement), all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions, so long as the DIP Lender has provided five (5) business days prior written notice to the Debtor, its bankruptcy counsel, counsel to any Committee, counsel to the Prepetition Secured Lender, and the U.S. Trustee:

(a) immediately terminate the Debtor's authority to use Cash Collateral and cease making any

advances or issuing any letters of credit under the DIP Facility, and cease authorizing the use thereof; (b) declare all DIP Obligations to be immediately due and payable; (c) charge the default rate of interest provided for under the DIP Credit Agreement; (d) exercise rights on monies or balances in the Debtor's accounts; (e) enforce rights against the DIP Collateral in the possession or control of the DIP Lender for application towards the DIP Obligations, including, as applicable, pursuant to each of the Collateral Access Agreements (as defined in the Prepetition Credit Agreement) provided under the Prepetition Loan Documents, which pursuant hereto the DIP Lender shall be deemed to be a successor and assign capable of enforcing all rights thereunder in respect to the DIP Obligations; and (f) take any other actions or exercise any other rights or remedies permitted under this Final Order, the DIP Loan Documents, or applicable law to effect the repayment of the DIP Obligations. Following the giving of written notice by the DIP Lender of the occurrence of an Event of Default, the Debtor and the Committee shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether an Event of Default has occurred; provided, however, that the Court may consider these arguments or any other pertinent matters. The Debtor shall not have the right to contest the enforcement of the remedies set forth in the Interim Order, this Final Order, and the DIP Loan Documents on any basis other than an assertion that no Event of Default has occurred, and, except with respect to such an assertion, no party-in-interest shall have the right to enjoin any such enforcement under section 105 of the Bankruptcy Code or otherwise, or to seek any injunctive relief inconsistent with the provisions of the Interim Order, this Final Order, or the DIP Loan Documents. The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under the DIP Loan Documents or otherwise. The Debtor shall cooperate fully with the DIP Lender in its

exercise of rights and remedies against the DIP Collateral. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 24 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

25. Credit Bid.

a. The DIP Lender shall have the unqualified right to credit bid up to the full amount of the outstanding DIP Obligations in any sale of any DIP Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

b. The Prepetition Secured Lender shall have the unqualified right to credit bid up to the full amount of any remaining Prepetition Obligations in the sale of any Prepetition Collateral subject to the satisfaction of the DIP Obligations, or as otherwise consented to by the DIP Lender under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

26. Binding Effect. Subject to Paragraph 17, the provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lender, the Prepetition Secured Lender, the Debtor, the Committee, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereafter appointed or elected for the estate of the Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary

appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor). To the extent permitted by applicable law, this Final Order shall bind any trustee hereafter appointed for the estate of the Debtor, whether in this Chapter 11 Case or in the event of the conversion of the Chapter 11 Case to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Final Order.

27. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of reorganization in the Chapter 11 Case (and, to the extent not satisfied in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor having hereby waived such discharge), (ii) converting the Chapter 11 Case to a chapter 7 case, or (iii) dismissing the Chapter 11 Case, and the terms and provisions of this Final Order as well as the DIP Super-Priority Claims and the DIP Liens in the DIP Collateral granted pursuant to the Interim Order, this Final Order, and the DIP Loan Documents (and with respect to the entry of any order as set forth in (ii) or (iii) herein, the Adequate Protection Liens and Prepetition Super-Priority Claims) shall continue in full force and effect notwithstanding the entry of any such order. Such claims and liens shall maintain their priority as provided by the Interim Order, this Final Order, and the DIP Loan Documents, and to the maximum extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full and discharged. In no event shall any plan of reorganization be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the DIP Loan Documents.

28. Reallocation. For the avoidance of doubt, in the event that it is determined by this Court after a successful Challenge, if any, by the Committee that the Prepetition Secured Lender did not maintain valid, perfected, and enforceable liens on the

Prepetition Collateral, the Bankruptcy Court, after notice and hearing, reserves the right to unwind, and reallocate any payments, or any portion thereof (which could include the disgorgement, recharacterization, or reallocation of interest, fees, principal, and/or other incremental consideration paid in respect thereto) made to the Prepetition Secured Lender, including the Prepetition Facility Advance Repayment, and modify any liens and claims granted pursuant to the Interim Order or this Final Order, including the grant of adequate protection to the Prepetition Secured Lender.

29. Insurance Policies. The DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtor which in any way relates to the DIP Collateral (but not, for the avoidance of doubt, the D&O Policies). The Debtor is authorized and directed to take any actions necessary to have the DIP Lender be added as an additional insured and loss payee on each insurance policy, except for the D&O Policies.

30. Restriction on Use of DIP Lender's Funds. The Debtor shall not be permitted to use the proceeds of the DIP Facility: (a) for the payment of interest and principal with respect to any indebtedness that is subordinated to the DIP Facility except as expressly set forth herein and permitted pursuant to the terms of the DIP Credit Agreement, (b) to finance in any way any adversary action, suit, arbitration, proceeding, application, motion, other litigation, examination, or investigation of any type relating to or in connection with the DIP Loan Documents, including, without limitation, any challenges to the Prepetition Obligations, or the validity, perfection, priority, or enforceability of any Prepetition Lien securing such claims or any payment made thereunder (except that proceeds of the DIP Facility will be available to pay the Committee's reasonable and documented fees and expenses incurred in investigating the

Prepetition Obligations in advance of the Investigation Termination Date), (c) to finance in any way any action, suit, arbitration, proceeding, application, motion, other litigation, examination, or investigation of any type adverse to the interests of the DIP Lender or its rights and remedies under the DIP Credit Agreement, the other DIP Loan Documents, the Interim Order, or this Final Order without the prior written consent of the DIP Lender, (d) to make any distribution under a plan of reorganization in any Chapter 11 Case, and (e) to make any payment in settlement of any material claim, action, or proceeding, before any court, arbitrator, or other governmental body without the prior written consent of the DIP Lender. Notwithstanding anything herein to the contrary, for so long as the Debtor is authorized to use the Prepetition Secured Lender's Cash Collateral with the consent of the Prepetition Secured Lender, no Cash Collateral of the Prepetition Secured Lender may be used directly or indirectly by the Debtor, the Committee, or any other person or entity to object to or contest in any manner the Prepetition Obligations or Prepetition Liens, or to assert or prosecute any actions, claims, or causes of action against the Prepetition Secured Lender without the consent of the Prepetition Secured Lender.

31. Release of Claims and Defenses. The Debtor hereby releases and discharges the DIP Lender and its affiliates, together with their respective agents, attorneys, advisors, officers, directors, and employees (collectively, the "Released Parties"), from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, any of the loans under the DIP Facility or the DIP Loan Documents, any aspect of the relationship between the Debtor, on the one hand, and any or all of the Released Parties, on the other hand, relating to any of DIP Loan Documents or any transaction contemplated thereby or any other acts or omissions by any or all of the Released Parties in connection with any of the DIP Loan Documents or their prepetition relationship with the Debtor or any affiliate thereof relating to

any of the DIP Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action (collectively, the “Claims and Defenses”).

32. Protection Under Section 364(e). If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacation, or stay shall not affect the (i) validity of any DIP Obligations or Adequate Protection Obligations owing to the DIP Lender or the Prepetition Secured Lender incurred prior to the actual receipt by the DIP Lender or the Prepetition Secured Lender, as applicable, of written notice of the effective date of such reversal, modification, vacation, or stay, or (ii) validity or enforceability of any claim, lien, security interest, or priority authorized or created hereby or pursuant to the Interim Order or the DIP Loan Documents with respect to any DIP Obligations or Adequate Protection Obligations owing to the Prepetition Secured Lender. Notwithstanding any such reversal, modification, vacation, or stay, any use of Cash Collateral or the incurrence of DIP Obligations, or Adequate Protection Obligations owing to the Prepetition Secured Lender, by the Debtor prior to the actual receipt by the DIP Lender or the Prepetition Secured Lender, as applicable, of written notice of the effective date of such reversal, modification, vacation, or stay, shall be governed in all respects by the provisions of the Interim Order, this Final Order, and the Prepetition Secured Lender shall be entitled to all of the rights, remedies, protections, and benefits granted under section 364(e) of the Bankruptcy Code, the Interim Order, this Final Order, and the DIP Loan Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations, and Adequate Protection Obligations owing to the Prepetition Secured Lender.

33. Effect of Dismissal of Chapter 11 Case. If the Chapter 11 Case is dismissed, converted, or substantively consolidated, such dismissal, conversion, or substantive consolidation of the Chapter 11 Case shall not affect the rights of the DIP Lender or the Prepetition Secured Lender under their respective DIP Loan Documents, Prepetition Loan Documents, the Interim Order, or this Final Order, and all of the respective rights and remedies thereunder of the DIP Lender and Prepetition Secured Lender shall remain in full force and effect as if the Chapter 11 Case had not been dismissed, converted, or substantively consolidated. If an order dismissing the Chapter 11 Case is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that: (i) the DIP Liens and DIP Super-Priority Claims granted to and conferred upon the DIP Lender and the protections afforded to the DIP Lender pursuant to the Interim Order, this Final Order, and the DIP Loan Documents shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order and this Final Order until all DIP Obligations shall have been paid and satisfied in full (and that such DIP Liens, DIP Super-Priority Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); (ii) those primed or unprimed (as the case may be) Prepetition Liens, Adequate Protection Liens, and Prepetition Super-Priority Claims granted to and conferred upon the Prepetition Secured Lender shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order and this Final Order until all Prepetition Indebtedness shall have been paid and satisfied in full (and that such Prepetition Super-Priority Claims shall, notwithstanding such dismissal, remain binding on all interested parties); and (iii) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of

enforcing the DIP Liens, Prepetition Liens, Adequate Protection Liens, DIP Super-Priority Claims, and Prepetition Super-Priority Claims referred to herein.

34. Proofs of Claim. The DIP Lender, the Pre-Petition Secured Lender, and the Senior Subordinated Noteholders shall not be required to file proofs of claim in the Chapter 11 Case for any claim allowed herein. Any proof of claim filed by the Pre-Petition Secured Lender, and the Senior Subordinated Noteholders shall be deemed to be in addition to (and not in lieu of) any other proof of claim that may be filed by any such persons. Any order entered by the Court in relation to the establishment of a bar date in any of the Cases shall not apply to the Pre-Petition Secured Lender, and the Senior Subordinated Noteholders.

35. Choice of Law; Jurisdiction. The DIP Facility and the DIP Loan Documents (and the rights and obligations of the parties thereto) shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, and, to the extent applicable, the Bankruptcy Code. The Bankruptcy Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the DIP Loan Documents.

36. Order Effective. This Final Order shall constitute findings of fact and conclusions of law and shall be effective as of the date of the signature by the Court, and there shall be no stay of effectiveness of this Final Order.

37. No Requirement to Accept Title to Collateral. Neither the DIP Lender nor the Prepetition Secured Lender shall be obligated to accept title to any portion of the Prepetition Collateral or DIP Collateral in payment of the indebtedness owed to such party by the Debtor, in lieu of payment in cash or cash equivalents, nor shall any of the DIP Lender nor

Prepetition Secured Lender be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Lender.

38. Controlling Effect of Final Order. Except as expressly modified or superseded by this Final Order, the Interim Order shall continue in full force and effect notwithstanding entry of this Final Order. To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Interim Order, the Motion, any prepetition agreement or any DIP Loan Document, the provisions of this Final Order shall control.

Signed on November [__], 2013

Walter Shapero
United States Bankruptcy Judge

EXHIBIT A

DIP Credit Agreement

EXECUTION COPY

SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION

CREDIT AND SECURITY AGREEMENT

by and between

GROEB FARMS, INC.

as Borrower,

and

HC CAPITAL HOLDINGS 0909A, LLC,

as Lender

Dated as of October 3, 2013

TABLE OF CONTENTS

PAGE

1.	DEFINITIONS AND CONSTRUCTION.....	1
1.1	Definitions, Code Terms, Accounting Terms and Construction.....	1
2.	LOANS AND TERMS OF PAYMENT	1
2.1	Revolving Loan Advances	1
2.1	Revolving Loan Advances	1
2.3	Borrowing Procedures.....	1
2.4	Payments; Prepayments.....	2
2.5	[Reserved]	3
2.6	Interest Rates: Rates, Payments, and Calculations	3
2.7	Designated Account	3
2.8	Maintenance of Loan Account; Statements of Obligations	3
2.9	Maturity Date; Termination Date	4
2.10	Effect of Maturity.....	4
2.11	Termination or Reduction by Borrower	4
2.12	Fees	4
2.13	[Reserved]	4
2.14	Illegality; Impracticability; Increased Costs.....	4
2.15	Capital Requirements	5
2.16	Priority and Liens Applicable to Borrower	5
2.17	No Discharge; Survival of Claims.....	5
3.	SECURITY INTEREST	6
3.1	Grant of Security Interest	6
3.2	Borrower Remains Liable	6
3.3	Assignment of Insurance.....	6
3.4	Financing Statements	6
4.	CONDITIONS	6
4.1	Conditions Precedent to the Initial Extension of Credit	6
4.2	Conditions Precedent to all Extensions of Credit	6
4.3	Conditions Subsequent.....	7
5.	REPRESENTATIONS AND WARRANTIES	7
6.	AFFIRMATIVE COVENANTS.....	7
6.1	Financial Statements, Reports, Certificates.....	7
6.2	Collateral Reporting	7
6.3	Existence	7
6.4	Maintenance of Properties.....	7
6.5	Taxes.....	7
6.6	Insurance	8
6.7	Inspections, Exams, Audits and Appraisals.....	8
6.8	Account Verification	8
6.9	Compliance with Laws.....	8
6.10	Environmental	8
6.11	Disclosure Updates.....	9
6.12	Collateral Covenants	10
6.13	Material Contracts	12
6.14	Location of Inventory and Equipment.....	12
6.15	Further Assurances.....	12
6.16	Material Licenses	13

6.17	Agricultural Matters	13
6.18	Payment of Post-Petition Obligations	13
6.19	Priority of Claims Waivers	13
6.20	Advisory Firm	13
6.21	Approved Budget; Cash Flow Reporting	13
6.22	Budget Compliance	14
7.	NEGATIVE COVENANTS	14
7.1	Indebtedness	14
7.2	Liens	14
7.3	Restrictions on Fundamental Changes	14
7.4	Disposal of Assets	14
7.5	Change Name	15
7.6	Nature of Business	15
7.7	Prepayments and Amendments	15
7.8	Change of Control	15
7.9	Restricted Junior Payments	15
7.10	Accounting Methods	15
7.11	Investments; Controlled Investments	15
7.12	Transactions with Affiliates	16
7.13	Use of Proceeds	16
7.14	Limitation on Issuance of Stock	16
7.15	Consignments	16
7.16	Inventory and Equipment with Bailees	16
7.17	Salaries and Other Compensation	17
7.18	Lease Rejections	17
7.19	Chapter 11 Claims	17
7.20	Repayment of Indebtedness	17
8.	[RESERVED]	17
9.	EVENTS OF DEFAULT	17
10.	RIGHTS AND REMEDIES	20
10.1	Rights and Remedies	20
10.2	Additional Rights and Remedies	21
10.3	Lender Appointed Attorney in Fact	22
10.4	Remedies Cumulative	22
10.5	Crediting of Payments and Proceeds	22
10.6	Marshaling	22
10.7	License	23
11.	WAIVERS; INDEMNIFICATION	23
11.1	Demand; Protest; etc.	23
11.2	The Lender's Liability for Collateral	23
11.3	Indemnification	23
12.	NOTICES	24
13.	CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER	25
14.	ASSIGNMENTS; SUCCESSORS	25
15.	AMENDMENTS; WAIVERS	26
16.	TAXES	26

17.	GENERAL PROVISIONS	26
17.1	Effectiveness	26
17.2	Section Headings.....	26
17.3	Interpretation.....	26
17.4	Severability of Provisions	26
17.5	Debtor-Creditor Relationship.....	26
17.6	Counterparts; Electronic Execution.....	27
17.7	Revival and Reinstatement of Obligations	27
17.8	Confidentiality	27
17.9	Lender Expenses	27
17.10	Setoff.....	28
17.11	Survival	28
17.12	Patriot Act	28
17.13	Integration	28
17.14	Bank Product Providers.....	28

EXHIBITS AND SCHEDULES

Schedule 1.1	Definitions
Schedule 2.12	Fees
Schedule 6.1	Financial Statements, Reports, Certificates
Schedule 6.2	Collateral Reporting
Exhibit A	Form of Compliance Certificate
Exhibit B	Conditions Precedent
Exhibit C	Conditions Subsequent
Exhibit D	Representations and Warranties
Exhibit E	Information Certificate
Exhibit F	Borrowing Request
Exhibit G	Approved Budget
Schedule A-1	Collection Account
Schedule A-2	Authorized Person
Schedule D-1	Designated Account
Schedule P-1	Permitted Investments
Schedule P-2	Permitted Liens

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

THIS SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION CREDIT AND SECURITY AGREEMENT (this "Agreement"), is entered into as of October 3, 2013, by and between **HC CAPITAL HOLDINGS 0909A, LLC** ("Lender") and **GROEB FARMS, INC.**, a Michigan corporation ("Borrower").

WHEREAS, on October 1, 2013 (the "Petition Date"), Borrower filed a voluntary petition with the Bankruptcy Court initiating a case under Chapter 11 of the Bankruptcy Code and has continued in the possession of its assets and in the management of its businesses pursuant to Section 1107 and 1108 of the Bankruptcy Code.

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions, Code Terms, Accounting Terms and Construction.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1. Additionally, matters of (i) interpretation of terms defined in the Code, (ii) interpretation of accounting terms and (iii) construction are set forth in Schedule 1.1.

2. LOANS AND TERMS OF PAYMENT.

2.1 **Revolving Loan Advances.**

(a) Subject to the terms and conditions of this Agreement, and prior to the Termination Date, Lender agrees to make advances of the revolving loans ("Advances") to Borrower in an amount at any one time outstanding not to exceed the Maximum Revolver Amount plus \$3,000,000 of Prepetition Advances (to the extent that such amount remains outstanding under the Prepetition Credit Facility and is not subject to challenge), less the amount of Prepetition Advances and Prepetition Term Loans outstanding at such time; provided, however, that the Aggregate Maximum Loan Balance shall not exceed, and shall be deemed to be reduced to, the lesser of (x) \$30,000,000 and (y) the Borrowing Base plus the Permitted Overadvance Amount at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued and unpaid thereon, shall be due and payable on the Termination Date. Lender has no obligation to (i) make an Advance at any time following the occurrence and during the continuance of a Default or an Event of Default and (ii) make an Advance in an amount that would, when added to all other Advances, exceed the amount permitted pursuant to Section 2.1(a).

2.2 **[RESERVED]**

2.3 **Borrowing Procedures.**

(a) **Procedure for Borrowing.** Each Borrowing shall be made by delivery to Lender of a Borrowing Request by an Authorized Person. Such written request must be received by Lender no later than noon (Central time) one (1) Business Day before the requested Funding Date specifying (i) the amount of such Borrowing, and (ii) the requested Funding Date, which shall be a Business Day. In lieu of delivering the above-described written request, any Authorized Person may give Lender telephonic notice of such request by the required time, followed promptly by such a written request. Lender is authorized to make the Advances based upon telephonic or other instructions received from anyone purporting to be an Authorized Person;

(b) **Making of Loans.** Promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Lender shall make the proceeds thereof available to Borrower on the applicable Funding Date by transferring immediately available funds equal to such amount to the Designated Account; provided, however, that, (i) Lender shall not have the obligation to make any Advance if (1) one or more of the applicable conditions precedent set forth in Section 4 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived by Lender, or (2) the requested Borrowing would exceed the Availability on such Funding Date and (ii) proceeds of the Borrowing shall be made available to Borrower by transferring immediately available funds equal to such amount to the Designated Account.

(c) **[Reserved]**

(d) **Protective Advances.** Lender may make an Advance for any reason at any time in its sole discretion, without Borrower's compliance with any of the conditions of this Agreement, and (i) disburse the proceeds directly to third Persons in order to protect Lender's interest in the Collateral or to perform any obligation of Borrower under this Agreement or any other Loan Document or otherwise to enhance the likelihood of repayment of the Obligations, or (ii) apply the proceeds to outstanding Obligations then due and payable to Lender (such Advance, a "Protective Advance").

2.4 **Payments; Prepayments.**

(a) **Payments by Borrower.** Except as otherwise expressly provided herein, all payments by Borrower shall be made to the Collection Account or as otherwise specified in the applicable Cash Management Documents.

(b) **Payments by Account Debtors.** Promptly (and in any event within 5 Business Days) prior to the opening of any new Lockbox, Borrower shall instruct the Account Debtors of Borrower to make payments directly to the Lockbox for deposit by Lender to the Collection Account, or Borrower shall instruct them to deliver such payments to Lender by wire transfer, ACH, or other means as Lender may direct for deposit to the Lockbox or Collection Account or for direct application to reduce the outstanding Advances, as Lender shall determine in its sole discretion. To the extent that any Account Debtors of Borrower make payments directly to any lockbox other than a Lockbox, Borrower shall cooperate with Lender in causing all such funds to be wired directly to Lender on a daily basis for deposit to the Lockbox or Collection Account or for direct application to reduce the outstanding Advances, as Lender shall determine in its sole discretion. If Borrower receives a payment or the Proceeds of Collateral directly, Borrower will promptly deposit the payment or Proceeds into the Collection Account. Until so deposited, Borrower will hold all such payments and Proceeds in trust for Lender without commingling with other funds or property.

(c) **Crediting Payments.** For purposes of calculating Availability and the accrual of interest on outstanding Obligations, unless otherwise provided in the applicable Cash Management Documents, each payment shall be applied to the Obligations on the first Business Day following the Business Day of deposit to the Collection Account or other receipt by Lender provided such payment is received in accordance with Lender's usual and customary practices. Any payment received by Lender that is not a transfer of immediately available funds shall be considered provisional until the item or items representing such payment have been finally paid under Applicable Law. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment, and that portion of outstanding Obligations corresponding to the amount of such dishonored payment item shall be deemed to bear interest as if the dishonored payment item had never been received by Lender. Each reduction in outstanding Advances resulting from the application of such payment to the outstanding Advances shall be accompanied by an equal reduction in the amount of outstanding Accounts.

(d) **Application of Payments.**

(i) All Collections and all Proceeds of Collateral received by Lender, shall be applied (subject to clause (ii) below), *first* to reduce the outstanding Prepetition Term Loans until such Prepetition Term Loans are Paid in Full, *second* to reduce the Prepetition Advances until the principal balance thereof equals \$3,000,000, *third* to reduce the Obligations in such manner as Lender shall determine in its sole discretion. Following the occurrence and during the continuance of an Event of Default, Proceeds of Collateral and Collateral shall be applied by Lender in such manner as Lender shall determine in its discretion including on account of obligations under the Prepetition Credit Facility. After payment in full in cash of all Obligations and termination of any commitment to provide Advances, any remaining balance shall be transferred to the Designated Account or otherwise to such other Person entitled thereto under Applicable Law.

(ii) (A) Each prepayment pursuant to Section 2.4(f)(i) shall be applied in the manner set forth in Section 10.5.

(e) **[Reserved]**

(f) **Mandatory Prepayments.**

(i) **Borrowing Base.** If, at any time, the Revolver Usage plus Prepetition Advances plus Prepetition Term Loans, in each case outstanding at such time, exceeds (any such excess amount being referred to as the "Overadvance Amount") the Borrowing Base plus the Permitted Overadvance Amount, then, at such time, the Borrower shall immediately pay the Obligations in an aggregate amount equal to the Overadvance Amount. If Payment in Full of the outstanding revolving loans is insufficient to eliminate the Overadvance Amount, Borrower shall prepay such amount of the outstanding Obligations in an amount at least equal to such excess. Lender shall not be obligated to provide any Advances during any period that an Overadvance Amount is outstanding.

2.5 **[Reserved]**

2.6 **Interest Rates: Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as provided in Section 2.6(b), the principal amount of all Obligations (except for Bank Products) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to the Interest Rate plus the applicable Interest Rate Margin, provided, that an amount equal to the Commitment Fee (as defined in that certain Commitment Letter dated as of October 1, 2013 by and between Borrower and Lender) to the extent paid by Borrower and added to the principal balance of the Obligations, shall not bear any interest pursuant to this Section 2.6(a) prior to the Termination Date (unless on such date, such principal amount is repaid in full in cash).

(b) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at any time following the Termination Date, the principal amount of all Obligations (except for Bank Products) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to 3 percentage points above the per annum rate otherwise applicable hereunder.

(c) **Payment.** Except to the extent provided to the contrary in Section 2.12, all interest, all fees payable hereunder or under any of the other Loan Documents, all costs and expenses payable hereunder or under any of the other Loan Documents, and all Lender Expenses shall be due and payable, in arrears, on the first day of each month and on the Termination Date. Borrower hereby authorizes Lender, from time to time without prior notice to Borrower, to charge all interest, all fees payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all costs and expenses payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all Lender Expenses (as and when due and payable), and all fees and costs provided for in Section 2.12 (as and when due and payable), and all other payment obligations as and when due and payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to any Bank Product Provider in respect of Bank Products) to the Loan Account, which amounts shall thereupon constitute Advances hereunder and, shall accrue interest at the rate then applicable to Advances. Any interest, fees, costs, expenses, Lender Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement that are charged to the Loan Account shall thereafter constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances.

(d) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Interest Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Interest Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Interest Rate.

(e) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and Lender, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under Applicable Law, then, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7 **Designated Account.** Borrower agrees to establish and maintain one or more Designated Accounts, each in the name of Borrower, for the purpose of receiving the proceeds of the Advances requested by Borrower and made by Lender hereunder. Unless otherwise agreed by Lender and Borrower, any Advance requested by Borrower and made by Lender hereunder shall be made to the applicable Designated Account.

2.8 **Maintenance of Loan Account; Statements of Obligations.** Lender shall maintain an account on its books in the name of Borrower (the "Loan Account") in which will be recorded, all Advances made by Lender to Borrower or for Borrower's account and all other payment Obligations hereunder or under the other Loan Documents, including accrued interest, fees and expenses, and Lender Expenses. In accordance with Section 2.4, the Loan Account will be credited with all payments received by Lender from Borrower or for Borrower's account. All monthly statements delivered by Lender to Borrower regarding the Loan Account, including with respect to principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Expenses owing, shall be subject to subsequent adjustment by Lender but shall, absent demonstrable error, be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and

Lender unless, within 30 days after receipt thereof by Borrower, Borrower shall deliver to Lender written objection thereto describing the error or errors contained in any such statements.

2.9 **Maturity Date; Termination Date.** Lender's obligations under this Agreement shall continue in full force and effect for a term ending on the earliest of (i) 110 days following the Petition Date (the "Maturity Date"), (ii) (x) three (3) days following the Petition Date unless, on or prior to such date, the Interim Order shall have been entered and be in full force and effect and not stayed and (y) the date that is 36 days following the Petition Date unless, on or prior to such 36th day, the Final Order shall have been entered and be in full force and effect and not stayed, (iii) the date Borrower terminates the Revolving Credit Facility, and (iv) the date the Revolving Credit Facility terminates pursuant to Section 10.1 or Section 10.2 following an Event of Default (the earliest of these dates, the "Termination Date"). The foregoing notwithstanding, Lender shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses, including Lender Expenses) in full on the Termination Date (other than the Hedge Obligations, which shall be paid in accordance with the applicable Hedge Agreement).

2.10 **Effect of Maturity.** On the Termination Date, all obligations of Lender to provide additional credit hereunder shall automatically be terminated and all of the Obligations (other than Hedge Obligations which shall be terminated in accordance with the applicable Hedge Agreement) shall immediately become due and payable in full in cash without notice or demand and Borrower shall immediately repay all of such Obligations in full. No termination of the obligations of Lender (other than cash payment in full of the Obligations and termination of the obligations of Lender to provide additional credit hereunder) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Lender's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full in cash and Lender's obligations to provide additional credit hereunder shall have been terminated. Provided that there are no suits, actions, proceedings or claims pending or threatened against any Indemnified Person under this Agreement with respect to any Indemnified Liabilities, Lender shall, at Borrower's expense, release or terminate (or authorize Borrower or its designee to release or terminate) any filings or other agreements that perfect the Security Interest, upon Lender's receipt of each of the following, in form and content satisfactory to Lender: (i) cash payment in full of all Obligations and completed performance by Borrower with respect to its other obligations under this Agreement, (ii) evidence that any obligation of Lender to make Advances to Borrower or provide any further credit to Borrower has been terminated, and (iii) an agreement by Borrower and each other Loan Party to indemnify Lender and its Affiliates for any payments received by Lender or its Affiliates that are applied to the Obligations as a final payoff that may subsequently be returned or otherwise not paid for any reason. With respect to any outstanding Hedge Obligations which are not so paid in full, the Bank Product Provider may require Borrower to cash collateralize the then existing Hedge Obligations in an amount acceptable to Lender prior to releasing or terminating any filings or other agreements that perfect the Security Interest.

2.11 **Termination or Reduction by Borrower.** Borrower may terminate the Credit Facility or reduce the Maximum Revolver Amount in whole or in part at any time prior to the Maturity Date, if Borrower (i) delivers a notice to Lender of its intentions at least five (5) Business Days prior to the proposed action and (ii) pays the Obligations (other than the outstanding Hedge Obligations, which shall be paid in accordance with the applicable Hedge Agreement) in full or down to the reduced Maximum Revolver Amount, as applicable. Any reduction in the Maximum Revolver Amount shall be in multiples of \$500,000, with a minimum reduction of at least \$1,000,000. Each such termination, reduction or prepayment shall be irrevocable. Once reduced, the Maximum Revolver Amount may not be increased.

2.12 **Fees.** Borrower shall pay to Lender the fees set forth on Schedule 2.12 attached hereto.

2.13 **[Reserved]**

2.14 **Illegality; Impracticability; Increased Costs.** In the event that, in each case after the date hereof, (i) any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof make it unlawful or impractical for Lender to fund or maintain extensions of credit with interest based upon Daily Three Month LIBOR or to continue such funding or maintaining, or to determine or charge interest rates based upon Daily Three Month LIBOR, (ii) Lender determines that by reasons affecting the London interbank Eurodollar market, adequate and reasonable means do not exist for ascertaining Daily Three Month LIBOR, or (iii) Lender determines that the interest rate based on the Daily Three Month LIBOR will not adequately and fairly reflect the cost to Lender of maintaining or funding Advances at the interest rate based upon Daily Three Month LIBOR, Lender shall give notice of such changed circumstances to Borrower and (i) interest on the principal amount of such extensions of credit thereafter shall accrue interest at a rate equal to the Prime Rate plus the applicable Interest Rate Margin, and (ii) Borrower shall not be entitled to elect Daily Three Month LIBOR until Lender determines that it would no longer be unlawful or impractical to do so or that such increased costs would no longer be applicable (and Lender agrees to promptly notify Borrower at any time such changed circumstances no longer apply; provided, however, Lender shall have no liability to Borrower for failing to provide such notice).

2.15 **Capital Requirements.** If, after the date hereof, Lender determines that (i) the adoption after the date hereof of or change after the date hereof in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change after the date hereof in the interpretation, implementation, or application thereof by any Governmental Authority charged with the administration thereof, including those changes resulting from the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III, regardless of the date enacted, adopted or issued, or (ii) compliance by Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law) issued after the date hereof has the effect of reducing the return on Lender's or such holding company's capital as a consequence of Lender's loan commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by Lender to be material, then Lender may notify Borrower thereof. Following receipt of such notice, Borrower agrees to pay Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by Lender of a statement in the amount and setting forth in reasonable detail Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent demonstrable error). In determining such amount, Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender's right to demand such compensation; provided that Borrower shall not be required to compensate Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that Lender demands compensation from Borrower in respect of such law, rule, regulation or guideline giving rise to such reductions; provided further that if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.16 **Priority and Liens Applicable to Borrower.** Borrower hereby covenants, represents and warrants that, upon the execution of this Agreement subject to the entry of the Interim Order (and when applicable, the Final Order), the Obligations of Borrower:

(a) pursuant to Section 364(c)(1) of the Bankruptcy Code, shall at all times constitute a Superpriority Claim in the Case;

(b) pursuant to Section 364(c)(2) of the Bankruptcy Code, shall at all times be secured by a perfected first priority Lien on all real, personal, tangible and intangible property of Borrower's estate in the Case (including, without limitation, all of the outstanding shares of capital stock of Subsidiaries of Borrower (limited, in the case of voting capital stock of Foreign Subsidiaries, to 65% of the voting capital stock of first tier Foreign Subsidiaries to the extent a pledge of a greater percentage of such stock could reasonably be expected to result in material adverse tax consequences to Borrower or any of its Subsidiaries as reasonably determined by Borrower) that is not subject to valid, perfected and non-avoidable liens as of the Petition Date);

(c) pursuant to Section 364(d) of the Bankruptcy Code, shall at all times be secured by a perfected first priority priming lien on all real, personal, tangible and intangible property of Borrower subject to an existing lien securing outstanding debt under the Prepetition Credit Facility and the Prepetition Subordinated Debt.

(d) pursuant to each Subordination Agreement (as defined in the Prepetition Credit Facility) and to the extent applicable, Section 364(d) of the Bankruptcy Code, shall be secured by a perfected first priority priming Lien on all real, personal, tangible and intangible property of Borrower subject to a Lien securing the Prepetition Credit Facility and the Prepetition Subordinated Debt; and

(e) pursuant to Section 364(c)(3) of the Bankruptcy Code, shall be secured by a perfected junior Lien upon all real, personal, tangible and intangible property of Borrower's estate in the Case that is subject to valid, perfected and non-avoidable Liens in existence on the Petition Date or to valid Liens in existence on the Petition Date that are perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, in each case other than the Liens securing the Prepetition Credit Facility and the Prepetition Subordinated Debt, subject in the case of each of the preceding paragraphs, only to the Carve-Out, and, in each case, as set forth in the Orders.

2.17 **No Discharge; Survival of Claims.** Borrower agrees that (a) its obligations hereunder shall not be discharged by the entry of an order confirming a Reorganization Plan (and Borrower, pursuant to Section 1141(d)(4) of the Bankruptcy Code, hereby waives such discharge) and (b) the Superpriority Claim granted to Lender pursuant to the Orders and described in Section 2.16(a) and the Liens granted to Lender pursuant to the Orders and described in Sections 2.16(b), (c), (d) and (e) shall not be affected in any manner by the entry of an order confirming a Reorganization Plan other than the discharge and release of such Liens and upon the Payment in Full of the Obligations as provided herein.

3. SECURITY INTEREST.

3.1 **Grant of Security Interest.** Subject to the Orders, as applicable, Borrower hereby unconditionally grants, assigns, and pledges to Lender for the benefit of Lender and each Bank Product Provider that is a Lender, to secure payment and performance of the Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of its pre-Petition Date and post-Petition Date right, title, and interest in and to the Collateral. Following request by Lender, Borrower shall grant Lender a Lien and security interest in all Commercial Tort Claims that it may have against any Person. The Security Interest created hereby secures the payment and performance of the Obligations, whether now existing or arising hereafter.

3.2 **Borrower Remains Liable.** Anything herein to the contrary notwithstanding, (a) Borrower shall remain liable under the contracts and agreements included in the Collateral to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Lender of any of the rights hereunder shall not release Borrower from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) Lender shall not have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

3.3 **Assignment of Insurance.** As additional security for the Obligations, Borrower hereby assigns as security to Lender for the benefit of Lender and each Bank Product Provider that is a Lender all rights of Borrower under every policy of insurance covering the Collateral and all other assets and property of Borrower (including, without limitation, business interruption insurance and proceeds thereof) and all business records and other documents relating to it, and all monies (including proceeds and refunds) that may be payable under any policy, and Borrower and each other Loan Party hereby directs the issuer of each policy to pay all such monies directly and solely to Lender. If an Event of Default shall have occurred and be continuing, Lender may (but need not), in Lender's or Borrower's name, execute and deliver proofs of claim, receive payment of proceeds and endorse checks and other instruments representing payment of the policy of insurance, and adjust, litigate, compromise or release claims against the issuer of any policy. Any monies received under any insurance policy assigned as security to Lender, other than liability insurance policies, or received as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid to Lender and, as determined by Lender in its sole discretion, either be applied to prepayment of the Obligations or disbursed to Borrower under payment terms reasonably satisfactory to Lender for application to the cost of repairs, replacements, or restorations of the affected Collateral which shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed.

3.4 **Financing Statements.** Subject to the Orders, as applicable, Borrower authorizes Lender to file financing statements describing Collateral to evidence the perfection of Lender's Security Interest in the Collateral, and Lender may describe the Collateral as "all personal property" or "all assets" or describe specific items of Collateral including without limitation any Commercial Tort Claims. All financing statements filed before the date of this Agreement to perfect the Security Interest were authorized by Borrower and each other Loan Party and are hereby ratified.

4. CONDITIONS.

4.1 **Conditions Precedent to the Initial Extension of Credit.** The obligation of Lender to make the initial extension of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Lender, of each of the conditions precedent set forth on Exhibit B.

4.2 **Conditions Precedent to all Extensions of Credit.** The obligation of Lender to make any Advances hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of each Loan Party and its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall continue to be true and correct as of such earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof; and

(c) the Interim Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified and, following 36 days after the Petition Date, the Final Order shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified.

Any request for an extension of credit shall be deemed to be a representation by each Loan Party that the statements set forth in this Section 4.2 are correct as of the time of such request and (ii) if such extension of credit is a request for an Advance, sufficient Availability exists for such Advance pursuant to Section 2.1.

4.3 **Conditions Subsequent.** The obligation of Lender to continue to make Advances (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Exhibit C (the failure by Borrower or any other Loan Party to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof, shall constitute an Event of Default).

5. REPRESENTATIONS AND WARRANTIES.

In order to induce Lender to enter into this Agreement, Borrower, and each other Loan Party makes the representations and warranties to Lender set forth on Exhibit D. Each of such representations and warranties shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Advance or other extension of credit made thereafter, as though made on and as of the date of such Advance or other extension of credit (except to the extent that such representations and warranties relate solely to an earlier date in which case such representations and warranties shall continue to be true and correct as of such earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement.

6. AFFIRMATIVE COVENANTS.

Borrower and each other Loan Party covenants and agrees that until Payment in Full of the Obligations, Borrower and each other Loan Party shall, and shall cause each of its Subsidiaries to, comply with each of the following:

6.1 **Financial Statements, Reports, Certificates.** Deliver to Lender copies of each of the financial statements, reports, and other items set forth on Schedule 6.1 no later than the times specified therein. In addition, Borrower and each other Loan Party agree that no Subsidiary of Borrower or any other Loan Party will have a fiscal year different from that of Borrower. Borrower and each other Loan Party agree to maintain a system of accounting that enables it to produce financial statements in accordance with GAAP. Borrower and each other Loan Party shall also (a) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to the sales of such Loan Party and its Subsidiaries, and (b) maintain its billing systems/practices substantially as in effect as of the Closing Date and shall only make material modifications following prior notice to Lender.

6.2 **Collateral Reporting.** Provide Lender with each of the reports set forth on Schedule 6.2 at the times specified therein. In addition, Borrower agrees to use commercially reasonable efforts in cooperation with Lender to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

6.3 **Existence.** Except as otherwise permitted under Section 7.3 or Section 7.4, at all times maintain and preserve in full force and effect (a) its existence (including being in good standing in its jurisdiction of organization) and (b) all rights and franchises, licenses and permits material to its business; provided, however, that no Loan Party nor any of its Subsidiaries shall be required to preserve any such right or franchise, licenses or permits if the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lender; provided that Borrower delivers at least ten (10) days prior written notice to Lender of the election of such Loan Party or such Subsidiary not to preserve any such right or franchise, license or permit.

6.4 **Maintenance of Properties.** Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear and casualty excepted and Permitted Dispositions excepted (and except where the failure to so maintain and preserve such assets could not reasonably be expected to result in a Material Adverse Change), and comply with the material provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

6.5 **Taxes.**

(a) Cause all assessments and taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall

be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a Lien against any of the Collateral, (i) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax, and (ii) any such other Lien is at all times subordinate to Lender's Liens.

(b) Make timely payment or deposit of all tax payments and withholding taxes required of it and them by Applicable Laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Lender with proof reasonably satisfactory to Lender indicating that such Loan Party and its Subsidiaries have made such payments or deposits.

6.6 **Insurance.** At Borrower's expense, maintain insurance with respect to the assets of each Loan Party and each of its Subsidiaries, wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain, with respect to each Loan Party and each of its Subsidiaries, business interruption insurance, general liability insurance, flood insurance for Collateral located in a flood plain, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies acceptable to Lender and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Lender. All property insurance policies covering the Collateral are to be made payable to Lender for the benefit of Lender, as its interests may appear, in case of loss, pursuant to a lender loss payable endorsement reasonably acceptable to Lender and are to contain such other provisions as Lender may reasonably require to fully protect the Lender's interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Lender, with the lender loss payable (but only in respect of Collateral) and additional insured endorsements (with respect to general liability coverage) in favor of Lender and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Lender of the exercise of any right of cancellation. If Borrower fails to maintain such insurance, Lender may arrange for such insurance, but at Borrower's expense and without any responsibility on Lender's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrower shall give Lender prompt notice of any loss exceeding \$100,000 covered by such casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the right (but no obligation) to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

6.7 **Inspections, Exams, Audits and Appraisals.** Permit Lender and each of Lender's duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to conduct inspections, exams, audits and appraisals of the Collateral, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Lender may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower.

6.8 **Account Verification.** Permit Lender, in Lender's name or in the name of a nominee of Lender, to verify the validity, amount or any other matter relating to any Account, by mail, telephone, facsimile transmission or otherwise. Further, at the request of Lender, Borrower shall send requests for verification of Accounts or send notices of assignment of Accounts to Account Debtors and other obligors.

6.9 **Compliance with Laws.** Comply with the requirements of all Applicable Laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

6.10 **Environmental.**

(a) Keep any property either owned or operated by any Loan Party or any of its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances satisfactory to Lender and in an amount sufficient to satisfy the obligations or liability evidenced by such Environmental Liens;

(b) Comply, in all material respects, with Environmental Laws and provide to Lender documentation of such compliance which Lender reasonably requests, other than Environmental Laws the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change;

(c) Promptly notify Lender of any release of which any Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or any of its Subsidiaries and take

any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law related to such release; and

(d) Promptly, but in any event within 5 Business Days of its receipt thereof, provide Lender with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of any Loan Party or any of its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against any Loan Party or any of its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority regarding any Environmental Law.

6.11 **Disclosure Updates.**

(a) Promptly and in no event later than 5 Business Days after an officer of Borrower obtains knowledge thereof, notify Lender:

(i) if any written information, exhibit, or report furnished to Lender contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. Any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto;

(ii) of all actions, suits, or proceedings brought by or against any Loan Party or any of its Subsidiaries before any court or Governmental Authority which, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, provided that, in any event, such notification shall not be later than 5 days after service of process with respect thereto on any Loan Party or any of its Subsidiaries;

(iii) of (A) any disputes or claims by Borrower's customers exceeding \$100,000 individually or \$250,000 in the aggregate during any Fiscal Year; or (B) Goods returned to or recovered by Borrower outside of the ordinary course of business exceeding \$100,000 individually or \$250,000 in the aggregate during any Fiscal Year;

(iv) of any material loss or damage to any Collateral or any substantial adverse change in the Collateral;

(v) of a violation of any law, rule or regulation, the non-compliance with which reasonably could be expected to result in a Material Adverse Change;

(vi) of the occurrence of any ERISA Event; or

(vii) the filing or commencement of any material action, suit or proceeding with respect to any Lease.

(b) Promptly and in no event later than 5 Business Days after an officer of Borrower obtains knowledge thereof, notify Lender of any event or condition which constitutes a Default or an Event of Default and provide a statement of the action that Borrower proposes to take with respect to such Default or Event of Default.

(c) (i) Promptly in advance of filing with the Bankruptcy Court or delivering to the Creditor's Committee or to the U.S. Trustee, as the case may be, deliver to Lender all proposed orders and pleadings related to the Obligations and the Loan Documents, any Reorganization Plan and/or any disclosure statement related thereto and (ii) substantially simultaneously with the filing with the Bankruptcy Court or delivering to the Creditor's Committee or to the U.S. Trustee, as the case may be, deliver to Lender all other notices, filings, motions, pleadings or other information concerning the financial condition of Borrower or any of its Subsidiaries or other Indebtedness of Borrower or other the Loan Parties. Notwithstanding the foregoing, Borrower is not required to provide to Lender the information and/or documents that are delivered to the Creditor's Committee that directly relate to the process of marketing for sale in whole or in part Borrower's business and/or assets.

Upon request of Lender, each Loan Party shall deliver to Lender any other materials, reports, records or information reasonably requested relating to the operations, business affairs or financial condition of any Loan Party or any of its Subsidiaries or any Collateral or the Case.

6.12 **Collateral Covenants.** Comply with each of the following covenants.

(a) **Possession of Collateral.** In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, Investment Related Property, or Chattel Paper, Borrower shall promptly (and in any event within 5 Business Days after receipt thereof), notify Lender thereof, and if and to the extent that perfection or priority of Lender's Security Interest is dependent on or enhanced by possession, the applicable Loan Party, promptly (and in any event within 5 Business Days) after request by Lender, shall execute such other documents and instruments as shall be requested by Lender or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Related Property, or Chattel Paper to Lender, together with such undated powers (or other relevant document of assignment or transfer acceptable to Lender) endorsed in blank as shall be requested by Lender, and shall do such other acts or things deemed necessary or desirable by Lender to enhance, perfect and protect Lender's Security Interest therein;

(b) **Chattel Paper.**

(i) Promptly (and in any event within 5 Business Days) after request by Lender, each Loan Party shall take all steps reasonably necessary to grant Lender control of all electronic Chattel Paper of Borrower and any other Loan Party in accordance with the Code and all "transferable records" as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction;

(ii) If any Loan Party retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby), promptly upon the request of Lender, such Chattel Paper and instruments shall be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the Security Interest of HC Capital Holdings 0909A, LLC as Lender";

(c) **Control Agreements.**

(i) Except to the extent otherwise provided by Section 7.11, each Loan Party shall obtain a Control Agreement, from each bank (other than Lender) maintaining a Deposit Account for such Loan Party; except that no Control Agreement shall be required for up to two (2) petty cash accounts maintained with banks (other than Lender) so long as such petty cash accounts do not at any time contain more than \$5,000 in the aggregate at any one time.

(ii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall obtain a Control Agreement, from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for any Loan Party; and

(iii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall cause Lender to obtain "control", as such term is defined in the Code, with respect to all of the investment property of any Loan Party;

(iii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall at all times cause all cash and Cash Equivalents of such Loan Party (including proceeds of any Collateral) to be immediately deposited in Deposit Accounts subject to a Control Agreement in favor of Lender;

(d) **Letter-of-Credit Rights.** If any Loan Party is or becomes the beneficiary of letters of credit, then such Loan Party shall promptly (and in any event within 5 Business Days after becoming a beneficiary), notify Lender thereof and, promptly (and in any event within 2 Business Days) after request by Lender, enter into a tri-party agreement with Lender and the issuer or confirming bank with respect to letter-of-credit rights assigning such letter-of-credit rights to Lender and directing all payments thereunder to the Collection Account, all in form and substance reasonably satisfactory to Lender;

(e) **Commercial Tort Claims.** If any Loan Party or Loan Parties obtain Commercial Tort Claims, then the applicable Loan Party or Loan Parties shall promptly (and in any event within 5 Business Days of obtaining such Commercial Tort Claim), notify Lender upon incurring or otherwise obtaining such Commercial Tort Claims and, promptly (and in any event within 2 Business Days) after request by Lender, amend Schedule 5.6(d) to the Information Certificate to describe such Commercial Tort Claims in a manner that reasonably identifies such Commercial Tort Claims and which is otherwise reasonably satisfactory to Lender, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things deemed necessary or desirable by Lender to give Lender a first priority, perfected security interest in any such Commercial Tort Claim, which Commercial Tort Claim shall not be subject to any other Liens (other than junior Permitted Liens in favor of the Institutional Subordinated Creditors);

(f) **Government Contracts.** If any Account or Chattel Paper of any Loan Party arises out of a contract or contracts with the United States of America or any State or any department, agency, or instrumentality thereof, Loan Parties shall promptly (and in any event within 5 Business Days of the creation thereof) notify Lender thereof and, promptly (and in any event within 2 Business Days) after request by Lender, execute any instruments or take any steps reasonably required by Lender in order that all moneys due or to become due under such contract or contracts shall be assigned for security purposes to Lender, for the benefit of Lender and each Bank Product Provider, and shall provide written notice thereof under the Assignment of Claims Act or other Applicable Law;

(g) **Intellectual Property.**

(i) Upon the request of Lender, in order to facilitate filings with the PTO and the United States Copyright Office, subject to the Orders, as applicable, each Loan Party shall execute and deliver to Lender one or more Copyright Security Agreements, Patent Security Agreements or Trademark Security Agreements to further evidence Lender's Lien on such Loan Party's Patents, Trademarks, or Copyrights, and the General Intangibles of such Loan Party relating thereto or represented thereby;

(ii) Each Loan Party shall have the duty, with respect to Intellectual Property that is material and necessary in the conduct of such Loan Party's business, to protect and diligently enforce and defend at such Loan Party's expense such Intellectual Property, including (A) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (B) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter, (C) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or hereafter, (D) to take all reasonable and necessary action to preserve and maintain all of such Loan Party's Trademarks, Patents, Copyrights, Intellectual Property Licenses, and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of noncontestability, and (E) to require all employees, consultants, and contractors of each Loan Party who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment to such Loan Party of Intellectual Property rights created or developed and obligations of confidentiality. No Loan Party shall abandon any Intellectual Property or Intellectual Property License that is material and necessary in the conduct of such Loan Party's business. Each Loan Party shall take the steps described in this Section 6.12(g)(ii) with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is material and necessary in the conduct of such Loan Party's business;

(iii) Each Loan Party acknowledges and agrees that Lender shall have no duties with respect to any Intellectual Property or Intellectual Property Licenses of any Loan Party. Without limiting the generality of this Section 6.12(g)(iii), each Loan Party acknowledges and agrees that Lender shall not be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Licenses against any other Person, but Lender may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all Lender Expenses incurred in connection therewith (including reasonable fees and expenses of attorneys and other professionals) shall be for the sole account of Loan Party and shall be chargeable to the Loan Account;

(iv) Each Loan Party shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is material and necessary in connection with the conduct of such Loan Party's business. Any expenses incurred in connection with the foregoing shall be borne by the Loan Parties;

(v) No Loan Party shall enter into any Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person which is material and necessary in connection with the conduct of such Loan Party's business unless such Loan Party has used commercially reasonable efforts to permit the assignment of or grant of a security interest in such Intellectual Property License (and all rights of such Loan Party thereunder) to Lender (and any transferees of Lender);

(h) **Investment Related Property.**

(i) Upon the occurrence and during the continuance of an Event of Default, following the request of Lender, all sums of money and property paid or distributed in respect of the Investment Related Property that are received by any Loan Party shall be held by such Loan Party in trust for the benefit of Lender segregated from such Loan Party's other property, and such Loan Party shall deliver it promptly to Lender in the exact form received.

(ii) Each Loan Party shall cooperate with Lender in obtaining all necessary approvals and making all necessary filings under federal, state, local, or foreign law to effect the perfection of the Security Interest on the

Investment Related Property or to effect any sale or transfer thereof upon the occurrence and during the continuance of an Event of Default; and

(i) **Cash Management Transition.** Each Loan Party and each Subsidiary of each Loan Party shall maintain its Cash Management Services, including all deposit accounts and lockbox services in a manner, in accounts and at the same institutions, as existed immediately prior to the Petition Date, unless otherwise agreed to by Lender. Such Cash Management Services maintained by each Loan Party and each Subsidiary of each Loan Party shall be of a type and on terms reasonably satisfactory to Lender.

(j) **Motor Vehicles.** Promptly upon the request of the Lender in its sole discretion, Borrower shall deliver to Lender, an original certificate of title, a release signed by Wells Fargo, an application naming Lender as first priority lienholder thereto and/or such other documentation as Lender shall request with respect to each item of Eligible Equipment which is a motor vehicle or which has a certificate of title (including all such Eligible Equipment described on Schedule 5.33 to the Information Certificate), and Borrower shall cause, or cooperate with Lender in causing, such certificate of title and related items to be submitted to the appropriate state motor vehicle filing office for reissuance to Lender with the Lender's Lien noted thereon. Borrower shall deliver all original certificates of title with respect to Eligible Equipment and, upon request by Lender, all other original certificates of title with respect to motor vehicles and with respect to other equipment which has a certificate of title to be held by Lender. If Lender, in its sole discretion, agrees to any elimination or addition of any item of Eligible Equipment, upon request by Lender, Borrower shall amend Schedule 5.29 to the Information Certificate to accomplish such elimination or addition.

6.13 **Material Contracts.** Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 6.1, provide Lender with copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each material amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate. Each Loan Party shall maintain all Material Contracts in full force and effect and shall not default in the payment or performance of its obligations thereunder, except when such failure could not reasonably be expected to result in a Material Adverse Change.

6.14 **Location of Inventory and Equipment.** Keep the Inventory and Equipment of each Loan Party and each of its Subsidiaries (other than vehicles and Equipment out for repair and Inventory in transit) only at the locations identified on Schedule 5.29 to the Information Certificate or otherwise expressly permitted by Section 7.16 and keep the chief executive office of each Loan Party and each of its Subsidiaries only at the locations identified on Schedule 5.6(b) to the Information Certificate; provided, however, that Borrower may amend Schedule 5.29 to the Information Certificate so long as such amendment occurs by written notice to Lender not less than 10 days prior to the date on which such Inventory or Equipment is moved to such new location, and so long as, at the time of such written notification, the applicable Loan Party provides Lender a Collateral Access Agreement with respect thereto if such location is not owned by such Loan Party.

6.15 **Further Assurances.**

(a) At any time upon the reasonable request of Lender, execute or deliver to Lender any and all financing statements, fixture filings, security agreements, pledges, collateral assignments, endorsements of certificates of title, opinions of counsel, and all other documents (the "Additional Documents") that Lender may reasonably request and in form and substance reasonably satisfactory to Lender, to create, perfect, and continue perfection or to better perfect Lender's Liens in the assets of each Loan Party (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply to any Loan Party that is a CFC if providing such documents would result in adverse tax consequences or the costs to the Loan Parties of providing such documents are unreasonably excessive (as reasonably determined by Lender in consultation with Borrower) in relation to the benefits to Lender afforded thereby. To the maximum extent permitted by Applicable Law, if any Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time, not to exceed 10 days following the request to do so, such Loan Party hereby authorizes Lender to execute any such Additional Documents in the applicable Loan Party's name, as applicable, and authorizes Lender to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Lender may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the personal property assets of each Loan Party and all of the outstanding capital stock of each Loan Party (subject to exceptions and limitations contained in the Loan Documents including with respect to CFCs);

(b) Each Loan Party authorizes the filing by Lender of financing or continuation statements, or amendments thereto, and such Loan Party will execute and deliver to Lender such other instruments or notices, as Lender may reasonably request, in order to perfect and preserve the Security Interest granted or purported to be granted hereby;

(c) Each Loan Party authorizes Lender at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Collateral as “all personal property of debtor” or “all assets of debtor” or words of similar effect, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of such financing statement. Each Loan Party also hereby ratifies any and all financing statements or amendments previously filed by Lender in any jurisdiction; and

(d) Each Loan Party acknowledges that no Loan Party is authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of Lender, subject to such Loan Party’s rights under Section 9-509(d)(2) of the Code.

6.16 **Material Licenses.** Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 6.1, provide Lender with copies of each Material License entered into since delivery of the previous Compliance Certificate. Borrower and each other Loan Party shall maintain all of its Material Licenses in full force and effect, except when such failure could not reasonably be expected to result in a Material Adverse Change.

6.17 **Agricultural Matters.**

(a) Borrower and each of its Subsidiaries will comply with all payment instructions imposed on Borrower or such Subsidiary in any notification received by Borrower or such Subsidiary, whether pursuant to the UCC, the FSA or otherwise, and whether sent by a seller of farm products, a lender to such seller, the Secretary of State of any state or any other Person, of any Lien on any farm products purchased or to be purchased hereafter.

(b) Borrower and its Subsidiaries shall pay each of its invoices from vendors and suppliers of perishable agricultural commodities or other farm products in a manner and within a time period consistent with Borrower’s or such Subsidiary’s past practices, except for invoices being contested in good faith by appropriate proceedings and as to which adequate reserves have been taken in accordance with GAAP.

6.18 **Payment of Post-Petition Obligations.** Subject to the Orders, Borrower will, and will cause each of its Subsidiaries to, pay its post-Petition Date Indebtedness and other obligations, including tax liabilities and Lease obligations (but excluding any past due rent) before the same shall become delinquent or in default, except where (a)(1) the validity of or amount thereof is being contested in good faith by appropriate proceedings, (2) Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (3) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation or the right of the lessor under such Lease to terminate such Lease, or (4) the failure to make such payment could not reasonably be expected to result in a Material Adverse Change.

6.19 **Priority of Claims Waivers.** Unless reserved for in accordance with the Borrowing Base provisions hereof, Borrower from time to time shall promptly deliver, or cause to be promptly delivered, a priority of claims waiver (“Priority of Claims Waiver”) from each vendor, landlord, public warehouse operator or other third party bailee that has not provided a Priority of Claims Waiver in form and substance satisfactory to Lender for each third party storage facility located in any priming jurisdiction.

6.20 **Advisory Firm.** Borrower shall provide Lender with reasonable access to Houlihan Lokey Capital, Inc. and Conway MacKenzie, Inc. or any replacement or successor financial advisory firms retained by Borrower or any of the other Loan Parties, and Borrower shall instruct such firm to cooperate reasonably with Lender; provided, that, an authorized representative of Borrower shall be permitted to participate in any meeting or phone call with Lender and any such firm.

6.21 **Approved Budget; Cash Flow Reporting.**

(a) Commencing with the first Tuesday following the Closing Date, Borrower will furnish to Lender on each Tuesday (or, if such day is not a Business Day, the next succeeding Business Day) of each week, a report (the “Weekly Actuals Report”), in form and detail acceptable to Lender in its reasonable discretion, setting forth actual cash receipts and disbursements for the one week period ended on the previous Friday (or, in the case of first such report, the period from the Petition Date to the previous Friday).

(b) Together with every fourth Weekly Actuals Report (except, for the first four weeks following the Petition Date, with the second and fourth Weekly Actuals Report), Borrower will furnish to Lender an updated cash forecast (each, an “Updated Budget”) for the period from through the end of the succeeding 13 weeks, setting forth projected cash receipts and disbursements, in form and scope similar to the then-applicable Approved Budget. If acceptable to Lender in its sole

discretion (as confirmed by Lender in writing), such Updated Budget shall become the "Approved Budget" thereunder and shall govern for the period set forth therein until such time as a new Updated Budget shall be approved by Lender (if at all).

(c) Together with every fourth Weekly Actuals Report, Borrower will furnish to Lender a variance report showing the difference between actual cash receipts and disbursements for the immediately prior four week period commencing on the Petition Date and projected cash receipts and disbursements for such period as compared to the projections set forth in the Approved Budget.

6.22 **Budget Compliance.**

(a) (i) For each four week period commencing as of the Petition Date, Borrower will not permit the difference between the actual disbursements for the items set forth in the (w) "Honey Payments", (x) "Payroll", (y) "Other Operating Disbursements" and (z) "Total Disbursements" line items in the relevant Weekly Actuals Report for such four week period to exceed by more than 15% of the disbursements for such items for such period as set forth in the Approved Budget then-applicable for such period.

(ii) For the period commencing as of the Petition Date through the last date reflected in the relevant Weekly Actuals Report, Borrower will not permit the difference between the actual disbursements set forth in the "Professional Fees" line item in the relevant Weekly Actuals Report for such period to exceed by more than 15% of the disbursements for such line item for such period as set forth in the Approved Budget then applicable for such period.

(b) For each four week period commencing as of the Petition Date, Borrower will not permit the difference between the actual cash receipts set forth in each applicable receipts line item in the relevant Weekly Actuals Report for such four week period to be less than 85% of the cash receipts for each such line item for such period as set for in the Approved Budget then-applicable for such period.

(c) At no time shall Borrower use any Proceeds of Collateral, Collections or other assets except to the extent permitted by the Approved Budget then-applicable, subject to any variances permitted herein, or for any purpose not permitted by Section 7.13.

For the avoidance of doubt, the covenants included in this Section 6.22 shall apply in all circumstances and shall not be limited or deemed inapplicable notwithstanding anything set forth in any of the negative covenants included in Section 7 hereof.

7. **NEGATIVE COVENANTS.**

Borrower and each other Loan Party covenants and agrees that until Payment in Full of the Obligations, neither Borrower nor any other Loan Party will, nor will it permit any of its Subsidiaries to, do any of the following:

7.1 **Indebtedness.** Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

7.2 **Liens.** Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

7.3 **Restrictions on Fundamental Changes.**

(a) Other than pursuant to the RSA, enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock;

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution);

(c) Suspend or cease operation of a substantial portion of its or their business; or

(d) Form or acquire any direct or indirect Subsidiary after the Closing Date without the prior written consent of Lender, which consent may be given or withheld by Lender in its sole discretion.

7.4 **Disposal of Assets.** Other than Permitted Dispositions or transactions expressly permitted by Sections 7.3 or 7.12, sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the

Collateral or any other asset except as expressly permitted by this Agreement. Lender shall not be deemed to have consented to any sale or other disposition of any of the Collateral or any other asset except as expressly permitted in this Agreement or the other Loan Documents.

7.5 **Change Name.** Change the name, organizational identification number, state of organization, organizational identity or “location” for purposes of Section 9-307 of the Code of any Loan Party or any of its Subsidiaries, in each case without providing at least 45 days prior written notice thereof to Lender.

7.6 **Nature of Business.** Make any change in the nature of its or their business as conducted on the date of this Agreement or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, however, that the foregoing shall not prevent any Loan Party or any of its Subsidiaries from engaging in any business that is reasonably related or ancillary to its business.

7.7 **Prepayments and Amendments.**

(a) Except as expressly permitted by the Interim Order or the Final Order (as applicable), make any payment on account of Indebtedness or other obligations which are pre-Petition Date obligations or otherwise have been contractually subordinated in right of payment to the Obligations (or the “Obligations”, as such term is defined in the Prepetition Credit Facility) if such payment is not permitted at such time under this Agreement and the applicable subordination terms and conditions, including, without limitation, making any payment in respect of any Subordinated Debt if such payment is not expressly permitted under this Agreement and under the applicable Subordination Agreement; or

(b) Except as expressly permitted by the Interim Order or the Final Order (as applicable), directly or indirectly, amend, modify, or change any of the terms or provisions of

(i) any agreement, instrument, document, indenture, or other writing evidencing or governing any of the Subordinated Debt, except to the extent expressly permitted under the terms of the applicable Subordination Agreement and not inconsistent with the provisions of this Agreement;

(ii) any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change; or

(iii) the Governing Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of Lender.

7.8 **Change of Control.** Other than pursuant to the RSA, cause, permit, or suffer, directly or indirectly, any Change of Control.

7.9 **Restricted Junior Payments.** Declare or make any Restricted Junior Payment.

7.10 **Accounting Methods.** Modify or change its method of accounting (other than as may be required to be in conformity with GAAP).

7.11 **Investments; Controlled Investments.**

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment.

(b) Other than amounts deposited into Deposit Accounts identified on Schedule 5.15 to the Information Certificate which are specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the employees of any Loan Party or its Subsidiaries and other than amounts permitted in the petty cash accounts described in the following sentence, make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless such Loan Party or such Subsidiary, as applicable, and the applicable bank or securities intermediary have entered into Control Agreements with Lender governing such Permitted Investments in order to perfect (and further establish) Lender’s Liens in such Permitted Investments. No Loan Party shall, or shall permit any of its Subsidiaries, to establish or maintain any Deposit Account or Securities Account with a banking institution other than Lender or Wells Fargo, except for up to two (2) petty cash accounts maintained with banks (other than Lender) provided such petty cash accounts shall not contain more than \$5,000 in the aggregate at any one time.

7.12 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any transaction with any Loan Party or any Affiliate of any Loan Party or any of its Subsidiaries except for:

(a) so long as it has been approved by a Loan Party's or its applicable Subsidiary's Board of Directors (or comparable governing body) in accordance with Applicable Law, any reasonable and customary indemnity provided for the benefit of directors (or comparable managers) of such Loan Party or its applicable Subsidiary;

(b) so long as it has been approved by a Loan Party's or its applicable Subsidiary's Board of Directors (or comparable governing body) in accordance with Applicable Law, the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of such Loan Party or its applicable Subsidiary in the ordinary course of business and consistent with industry practice;

(c) transactions expressly permitted by Section 7.3 or Section 7.9;

(d) so long as Borrower has provided prior written notice thereof to Lender, a transaction not otherwise prohibited by this Agreement which has terms and conditions as favorable to such Loan Party as would be obtainable by such Loan Party in a comparable arms-length transaction with a Person which is not another Loan Party, Subsidiary or Affiliate; and

(e) the lending arrangement between Borrower and certain individual members of the Groeb family pursuant to which such individuals are indebted to Borrower in the approximate amount of \$185,000 on the Closing Date (as further described in Schedule P-1).

7.13 **Use of Proceeds.** The proceeds of the loans and Collections and Proceeds of Collateral shall be used (a) subject to the Orders and the limitations set forth in this Agreement, to refinance all of the Obligations (as such term is defined in the Prepetition Credit Facility) arising under or in connection with the Prepetition Credit Facility and to the extent outstanding on the Petition Date (except to the extent of \$3,000,000 of the Advances (as such term is defined in the Prepetition Credit Facility) which amount shall remain outstanding under the Prepetition Credit Facility in accordance with its terms), (b) on the Closing Date and thereafter, to pay the fees, costs and expenses, including Lender Expenses, incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, (c) subject to the terms and conditions hereof and the Approved Budget, for working capital purposes of Borrower, and (d) any payments contemplated by the so called "first day" motions filed in connection with the Case to the extent expressly permitted by the Approved Budget; provided, however, that no part of the proceeds of the loans made to Borrower will be used to purchase or carry any Margin Stock, to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any other purpose, in each case that violates the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System or for any purpose not permitted by the Orders, as applicable. Borrower shall not be permitted to use the proceeds of the loans: (i) to make any adequate protection payments not required under the Interim Order or the Final Order (as applicable), (ii) to finance in any way any action, suit, arbitration, proceedings, application, motion or other litigation challenging the validity, perfection, priority, extent or enforceability of the Obligations or the Liens of Lender on the Collateral, (iii) to finance in any way any action, suit, arbitration, proceedings, application, motion or other litigation challenging the validity, perfection, priority, extent or enforceability of the Obligations or the Liens of the Prepetition Lender on the Collateral (as defined in the Prepetition Credit Facility), (iv) except as required under the Interim Order or the Final Order, to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of Lender or (v) unless the Lender shall grant its consent in writing in its sole discretion, in violation of the Approved Budget.

7.14 **Limitation on Issuance of Stock.** Issue or sell or enter into any agreement or arrangement for the issuance and sale of any of its Stock which would result in a Change of Control.

7.15 **Consignments.** Consign any of its Inventory or sell any of its Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale, except as set forth on Schedule 7.15 to the Information Certificate.

7.16 **Inventory and Equipment with Bailees.** Store the Inventory or Equipment of any Loan Party or any of its Subsidiaries at any time now or hereafter with a bailee, warehouseman, or similar party, except as set forth on Schedule 5.29 to the Information Certificate or on Schedule 7.16 to the Information Certificate; provided, however, that Borrower may amend Schedule 5.29 to the Information Certificate so long as such amendment occurs by written notice to Lender not less than 10 days prior to the date such Inventory or Equipment is moved to such new location, and so long as, at the time of such written notice, the applicable Loan Party provides Lender a Collateral Access Agreement with respect to such location if such location is not owned by such Loan Party; provided, further, however, that no Collateral Access Agreement shall be required with respect to any such additional bailee or warehouseman location at which the maximum amount of Inventory and Equipment stored at such location does not exceed \$100,000.

7.17 **Salaries and Other Compensation.** Pay excessive or unreasonable salaries, bonuses, commissions, consultant fees or other compensation; or increase the salary, bonus, commissions, consultant fees or other compensation of the directors, officers and consultants of any Loan Party, and any members of their families except to the extent approved in an order entered by the Bankruptcy Court and acceptable to the Lender in its reasonable discretion, and permitted pursuant to the Applicable Budget.

7.18 **Lease Rejections.** Borrower shall not, and shall not permit any other Loan Party to, pursuant to Section 365 of the Bankruptcy Code, reject a Lease or otherwise terminate a Lease (including, without limitation, as a result of the expiration of the assumption period provided for in Section 365(d)(4) of the Bankruptcy Code) without first providing 15 days' prior written notice to Lender (or such lesser period agreed to by Lender in its reasonable discretion) during which time Lender shall be permitted to find a replacement leasee to whom such Lease may be assigned; Borrower hereby consents to such prospective assignee found by Lender and agrees that the Loan Parties shall (i) not seek to reject such Lease, (ii) promptly withdraw any previously filed rejection motion and (iii) promptly file a motion seeking expedited relief and hearing on the earliest court date available for purposes of assuming such Lease and assigning it to such assignees.

7.19 **Chapter 11 Claims.** Borrower shall not incur, create, assume, suffer to exist or permit any super-priority administrative claim against any Loan Party which is *pari passu* with or senior to the claims of Lender against the Loan Parties.

7.20 **Repayment of Indebtedness.** Except pursuant to a confirmed Reorganization Plan or the "first day" orders and except as specifically permitted hereunder, Borrower shall not, without the express prior written consent of Lender, make any payment or transfer with respect to any Lien, Indebtedness or other obligation incurred or arising prior to the filing of the Case that is subject to the automatic stay provisions of the Bankruptcy Code whether by way of "adequate protection" under the Bankruptcy Code or otherwise.

8. **[RESERVED]**

9. **EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an event of default (each, an "**Event of Default**") under this Agreement:

9.1 If Borrower fails to pay when due and payable, or when declared due and payable, all or any portion of the Obligations consisting of principal, interest, fees, charges or other amounts due Lender or any Bank Product Provider, reimbursement of Lender Expenses, or other amounts constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding);

9.2 If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 4.3, 6.1, 6.2, 6.3 (solely if any Loan Party is not in good standing in its jurisdiction of organization), 6.5(a) (solely with respect to F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a lien having priority over Lender's Liens), 6.5(b), 6.6, 6.7 (solely if any Loan Party or any of its Subsidiaries refuses to allow Lender or its representatives or agents to visit its properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss its affairs, finances, and accounts with its officers and employees), 6.8, 6.11, 6.12; 6.13, 6.14, 6.16 or 6.17 of this Agreement, or (ii) Section 7 of this Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 6.3 (other than if a Loan Party is not in good standing in its jurisdiction of organization), 6.4, 6.5(a) (other than F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a lien having priority over Lender's Liens), 6.7 (other than if any Loan Party or any of its Subsidiaries refuses to allow Lender or its representatives or agents to visit its properties, inspect its assets or books or records, examine and make copies of its books or records or disclose its affairs, finances, and accounts with its officers and employees), 6.9, 6.10, and 6.15 of this Agreement and such failure continues for a period of 15 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party or (ii) the date on which written notice thereof is given to any Loan Party by Lender; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is unable to be cured or is the subject of another provision of this Section 9 (in which event such other provision of this Section 9 shall govern), and such failure

continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Loan Party or (ii) the date on which written notice thereof is given to any Loan Party by Lender;

(d) (i) fails to perform or observe any covenant or other agreement contained in the RSA or (ii) takes any action inconsistent with the RSA;

9.3 [Reserved]

9.4 [Reserved]

9.5 [Reserved]

9.6 If any Loan Party or any of its Subsidiaries or any Guarantor is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of such Loan Party, such Subsidiary or such Guarantor, taken as a whole;

9.7 [Reserved]

9.8 If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

9.9 If the obligation of any Guarantor under any Guaranty or any other Loan Document to which any Guarantor is a party is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement or such Guaranty), or if any Guarantor fails to perform any obligation under any Guaranty or under any such Loan Document, or repudiates or revokes or purports to repudiate or revoke any obligation under any Guaranty or any such Loan Document, or any Guarantor is dissolved, liquidated or ceases to exist for any reason (in each case other than as a result of a transaction expressly permitted under the Loan Documents);

9.10 [Reserved]

9.11 [Reserved]

9.12 If any event or circumstance shall occur which, in the sole discretion of Lender exercised in good faith, would be reasonably likely to cause Lender to suspect that any Loan Party or any Guarantor has engaged in fraudulent activity with respect to the Collateral or other matters;

9.13 Any director, officer or owner of at least ten percent (10%) of the issued and outstanding ownership interests of a Loan Party or a Guarantor is indicted for a felony offense under state or federal law involving embezzlement, fraud or any other financial crime or any other felony offense under state or federal law involving intentional misconduct, or a Loan Party or a Guarantor hires an officer or appoints a director who has been convicted of any such felony offense, or a Person becomes an owner of at least ten percent (10%) of the issued and outstanding ownership interests of a Loan Party or a Guarantor who has been convicted of any such felony offense; provided, however, the indictment of Ernest Groeb and/or Troy Groeb, formerly directors/officers and current owners, for felony offenses involving the illegal importation of honey or related offenses under state or federal laws shall not constitute an Event of Default under this Section 9.13;

9.14 If any Loan Party or any Guarantor fails to pay any indebtedness or obligation owed to Lender or its Affiliates which is unrelated to the Credit Facility or this Agreement as it becomes due and payable or the occurrence of any default or event of default under any agreement between any Loan Party or any Guarantor and Lender or its Affiliates unrelated to the Loan Documents;

9.15 The validity or enforceability of any Loan Document as against any Loan Party or of any Guaranty as against such Guarantor shall at any time for any reason be declared to be null and void, or a proceeding shall be commenced by a Loan Party or any Subsidiary of a Loan Party or by any Guarantor, or by any Governmental Authority having jurisdiction over a Loan Party or any Subsidiary of a Loan Party or any Guarantor, seeking to establish the invalidity or unenforceability thereof as against any Loan Party or any Guarantor, or a Loan Party or any Subsidiary of a Loan Party or any Guarantor shall deny that such Loan Party or such Subsidiary or such Guarantor has any liability or obligation purported to be created under any Loan Document or any Guaranty;

9.16 If (i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$25,000, or (ii) any Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan;

9.17 If any Key Officer shall die or shall fail to remain in such position or shall fail to perform the material duties of such position;

9.18 If Borrower implements any product recall involving any products of Borrower which Borrower's customers have purchased from Borrower in an aggregate amount in excess of \$25,000 during any Fiscal Year;

9.19 Any Loan Party or any Guarantor (i) becomes the subject of any governmental investigation related to any felony offense, or is indicted by any Governmental Authority with respect to any felony offense, under federal or state law; provided, however, that the investigation which was commenced by the USAO NDIL and described in, and deferred pursuant to, the Deferred Prosecution Agreement, shall not be deemed a violation of this Section 9.19 so long as any such investigation or prosecution continues to be deferred under the Deferred Prosecution Agreement and so long as Borrower has not failed to cure a material breach under the Deferred Prosecution Agreement within the applicable cure period (if any) under the Deferred Prosecution Agreement, or (ii) becomes the subject of any investigation, prosecution, charge or action related to any offense or any violation of law related to the factual matters described in the Deferred Prosecution Agreement by any federal or state agency or department or other Governmental Authority other than the USAO NDIL;

9.20 (a) Borrower receives notice from the USAO NDIL that a material breach has occurred under any provision of the Deferred Prosecution Agreement and such material breach has not been cured within the applicable cure period (if any) under the Deferred Prosecution Agreement, (b) the USAO NDIL commences or recommences any investigation or prosecution with respect to any matter or matters described in the factual statement of the Deferred Prosecution Agreement, or (c) the Deferred Prosecution Dismissal has not occurred on or before February 28, 2015;

9.21 If any obligation of any Pledgor under any Pledge Agreement or other Loan Document to which it is a party is limited or terminated by operation of law, or if any Pledgor fails to perform any of its obligations under any Pledge Agreement or other Loan Document to which it is a party, or any Pledgor purports to repudiate or revoke any of its obligations under any Pledge Agreement or other Loan Document to which it is a party, or any Pledgor is dissolved, liquidated or ceases to exist for any reason or is the subject of an Insolvency Proceeding;

9.22 The Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or Borrower or any Loan Party shall file a motion or other pleading seeking the dismissal of the Case under Section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in the Case and the order appointing such trustee, responsible office or examiner shall be reversed or vacated within 20 days after the entry thereof; an order of a Bankruptcy Court shall be entered granting any Superpriority Claim (other than the Carve-Out) in the Case which is *pari passu* with or senior to the claims of Lender against Borrower or any Loan Party thereunder;

9.23 The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of Borrower or any of the Loan Parties or permit other actions that would result in a Material Adverse Change;

9.24 An order of the Bankruptcy Court shall be entered reversing, staying, vacating or (without the written consent of Lender) otherwise amending, supplementing or modifying the Interim Order or the Final Order in a manner which is adverse to the interest of Lender;

9.25 Except as permitted by the Interim Order or Final Order, or as otherwise permitted by this Agreement (including in connection with adequate protection payments), or as otherwise agreed to by Lender, Borrower or any Loan Party shall make any Prepetition Payment other than Prepetition Payments authorized by the Bankruptcy Court (i) in accordance with "first day" or "second day" orders, (ii) in connection with the assumption of executor contracts and unexpired leases and (ii) in respect of accrued payroll and related expenses and employee benefits as of the Petition Date;

9.26 Borrower or any Loan Party shall not comply with any terms of any of the (i) Interim Order, (ii) Final Order or (iii) Approved Budget;

9.27 Borrower or any other Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order, authorizing a process for the sale of all or substantially all of Borrower's or any Loan Party's assets pursuant to Section 363 of the Bankruptcy Code;

9.28 Borrower or any Subsidiary shall fail to make payments (whether principal, interest or fees and expenses and in excess of \$5,000) in respect to any post-Petition Date Indebtedness, when and as the same shall become due and payable;

9.29 Any event or condition occurs that results in any post-Petition Date Indebtedness in an aggregate principal amount in excess of \$5,000 becoming due prior to its scheduled maturity or that enables or permits (after the giving of notice and/or the lapse of any applicable grace period) the holder or holders of such Indebtedness or any trustee or agent on its or their behalf to cause any such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 9.29 shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

9.30 One or more judgment for the payment of money of a post-Petition Date liability or debt in excess of amounts covered by insurance shall be rendered against Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of ten (10) consecutive days during which executing shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of Borrower or any Subsidiary to enforce any such judgment; and

9.31 Any Lien purported to be created under any Loan Documents including the Interim Order or the Final Order shall cease to be, or shall be asserted by Borrower or any Loan Party not to be, a valid and perfected Lien on any material portion of the Collateral, with the priority required by the applicable Loan Document, Interim Order or Final Order, except as expressly permitted hereunder or thereunder; or any Borrower or Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document or any Lien granted under any Loan Document or the Interim Order or the Final Order; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document.

9.32 Any Subordinated Creditor that is a party to the RSA shall file a motion with the Bankruptcy Court in breach of the applicable Subordination Agreement with Borrower or otherwise in breach of the RSA.

9.33 Any Subordinated Creditor that is not a party to the RSA shall file a motion with the Bankruptcy Court in breach of the applicable Subordination Agreement with Borrower and such motion is not dismissed within fourteen (14) days.

9.34 Except as a result of the Case, any material provision of any Prepetition Loan Documents, at any time after their execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or as a result of acts or omissions by the Prepetition Lender or the Payment in Full of the Prepetition Obligations, ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of any provision of any Prepetition Loan Documents; or any Loan Party denies in writing that it has any or further liability or obligation under any Prepetition Loan Documents (other than as a result of a discharge of such Loan Party's Prepetition Obligations in accordance with the terms thereof), or purports in writing to revoke or rescind any Prepetition Loan Documents.

9.35 The loss of plan exclusivity by the Company under section 1121 of the Bankruptcy Code.

10. RIGHTS AND REMEDIES.

10.1 **Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before or notice from, the Bankruptcy Court (in each case under clauses (a) or (b) by written notice to Borrower), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by Applicable Law, do any one or more of the following:

(a) declare the Obligations (other than the Hedge Obligations, which may be accelerated in accordance with the terms of the applicable Hedge Agreement), whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrower and each other Loan Party shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower and each Loan Party;

(b) declare the funding obligations of Lender under this Agreement terminated, whereupon such funding obligations shall immediately be terminated together with any obligation of Lender hereunder to make Advances;

(c) give notice to an Account Debtor or other Person obligated to pay an Account, a General Intangible, Negotiable Collateral, or other amount due, notice that the Account, General Intangible, Negotiable Collateral or other amount due has been assigned to Lender for security and must be paid directly to Lender and Lender may collect the Accounts, General Intangible and Negotiable Collateral of each Loan Party directly, and any collection costs and expenses shall constitute part of the Obligations under the Loan Documents;

(d) in Lender's name or in each Loan Party's name, as such Loan Party's agent and attorney-in-fact, notify the United States Postal Service to change the address for delivery of such Loan Party's mail to any address designated by Lender, otherwise intercept such Loan Party's mail, and receive, open and dispose of such Loan Party's mail, applying all Collateral as permitted under this Agreement and holding all other mail for such Loan Party's account or forwarding such mail to such Loan Party's last known address;

(e) without notice to or consent from any Loan Party, and without any obligation to pay rent or other compensation, take exclusive possession of all locations where any Loan Party conducts its business or has any rights of possession and use the locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, and for any other incidental purposes deemed appropriate by Lender in good faith; and

(f) exercise all other rights and remedies provided for in this Agreement, in the other Loan Documents, or otherwise available to it, including, without limitation, all the rights and remedies of a secured party on default under the Code or any other Applicable Law.

10.2 **Additional Rights and Remedies.** Without limiting the generality of the foregoing and upon the occurrence and during the continuance of an Event of Default, Borrower and each other Loan Party expressly agrees that:

(a) Lender, without demand of performance or other demand, advertisement or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon Borrower, any Loan Party or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or any other Applicable Law), may take immediate possession of all or any portion of the Collateral and (i) require Borrower and each other Loan Party to, and Borrower and each other Loan Party hereby agrees that it will at its own expense and upon request of Lender forthwith, assemble all or part of the Collateral as directed by Lender and make it available to Lender at one or more locations designated by Lender where Borrower or such other Loan Party conducts business, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Lender's, Borrower's or such other Loan Party's offices or elsewhere, for cash, on credit, and upon such other terms as Lender may deem commercially reasonable. Borrower and each other Loan Party agrees that, to the extent notice of sale shall be required by law, at least 10 days notice to Borrower or such other Loan Party of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time, and such sale may be made at the time and place to which it was so adjourned. Borrower and each other Loan Party agrees that the internet shall constitute a "place" for purposes of Section 9-610(b) of the Code. Borrower and each other Loan Party agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and Borrower or such other Loan Party is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the Code;

(b) Lender may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under Applicable Law and without the requirement of notice to or upon any Loan Party or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other Applicable Law), (i) with respect to any Loan Party's Deposit Accounts in which Lender's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for the applicable Loan Party to pay the balance of such Deposit Account to or for the benefit of Lender, and (ii) with respect to any Loan Party's Securities Accounts in which Lender's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for the applicable Loan Party to (A) transfer any cash in such Securities Account to or for the benefit of Lender, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Lender;

(c) any cash held by Lender as Collateral and all cash proceeds received by Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Obligations in the order set forth in Section 10.5 of this Agreement. In the event the proceeds of Collateral are insufficient to satisfy all of the Obligations in full, Borrower and each other Loan Party shall remain jointly and severally liable for any such deficiency; and

(d) the Obligations arise out of a commercial transaction, and that if an Event of Default shall occur and be continuing Lender shall have the right to an immediate writ of possession without notice of a hearing. Lender shall have the right to the appointment of a receiver for each Loan Party or for the properties and assets of each Loan Party, and Borrower and each other Loan Party hereby consents to such rights and such appointment and hereby waives any objection Borrower or such Loan Party may have thereto or the right to have a bond or other security posted by Lender.

10.3 **Lender Appointed Attorney in Fact.** Borrower and each other Loan Party hereby irrevocably appoints Lender its attorney-in-fact, with full authority in the place and stead of Borrower or such Loan Party and in the name of Borrower or such Loan Party or otherwise, at such time as an Event of Default has occurred and is continuing, to take any action and to execute any instrument which Lender may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Accounts or any other Collateral of Borrower or such other Loan Party;

(b) to receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral or Chattel Paper;

(c) to file any claims or take any action or institute any proceedings which Lender may deem necessary or desirable for the collection of any of the Collateral of Borrower or such other Loan Party or otherwise to enforce the rights of Lender with respect to any of the Collateral;

(d) to repair, alter, or supply Goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to Borrower or such other Loan Party in respect of any Account of Borrower or such other Loan Party;

(e) to use any Intellectual Property or Intellectual Property Licenses of Borrower or such other Loan Party including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of Borrower or such other Loan Party;

(f) to take exclusive possession of all locations where Borrower or such other Loan Party conducts its business or has rights of possession, without notice to or consent of Borrower or any Loan Party and to use such locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, without obligation to pay rent or other compensation for the possession or use of any location;

(g) Lender shall have the right, but shall not be obligated, to bring suit in its own name or in the applicable Loan Party's name, to enforce the Intellectual Property and Intellectual Property Licenses and, if Lender shall commence any such suit, Borrower or such other Loan Party shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement; and

(h) to the extent permitted by law, Borrower and each other Loan Party hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all commitments of Lender under this Agreement to provide extensions of credit are terminated and all Obligations have been paid in full in cash.

10.4 **Remedies Cumulative.** The rights and remedies of Lender under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Default or Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

10.5 **Crediting of Payments and Proceeds.** All payments received by Lender with respect to the Obligations and all net proceeds from the enforcement of the Obligations shall be applied in such manner as Lender shall determine in its sole discretion and, thereafter, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under Applicable Law.

10.6 **Marshaling.** Lender shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies under the Loan Documents and

in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Borrower and each other Loan Party hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of Lender's rights and remedies under the Loan Documents or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations are outstanding or by which any of the Obligations are secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, Borrower hereby irrevocably waives the benefits of all such laws.

10.7 **License.** Borrower and each other Loan Party hereby grants to Lender a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property rights of Borrower and such other Loan Party for the purpose of: (a) completing the manufacture of any in-process materials upon the occurrence and during the continuance of any Event of Default so that such materials become saleable Inventory, all in accordance with the same quality standards previously adopted by Borrower or such other Loan Party for its own manufacturing; and (b) selling, leasing or otherwise disposing of any or all Collateral upon the occurrence and during the continuance of any Event of Default.

11. WAIVERS; INDEMNIFICATION.

11.1 **Demand; Protest; etc.** Borrower and each other Loan Party waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by Lender on which Borrower or such other Loan Party may in any way be liable.

11.2 **The Lender's Liability for Collateral.** Borrower and each other Loan Party hereby agrees that: (a) so long as Lender complies with its obligations, if any, under the Code, Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower and such other Loan Party.

11.3 **Indemnification.** Borrower and each other Loan Party shall pay, indemnify, defend, and hold the Lender-Related Persons (each, an "**Indemnified Person**") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring, waiver, amendment, forbearance or workout with respect hereto) of this Agreement, any of the other Loan Documents, the Interim Order, the Final Order or the transactions contemplated hereby or thereby or the monitoring of compliance by each Loan Party and each of its Subsidiaries with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the Interim Order, the Final Order or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, (c) in connection with the custody, preservation, use or operation of, or, upon an Event of Default, the sale of, collection from, or other realization upon, any of the Collateral in accordance with this Agreement and the other Loan Documents, (d) with respect to the failure by Borrower or any other Loan Party to perform or observe any of the provisions hereof or any other Loan Document, (e) in connection with the exercise or enforcement of any of the rights of Lender hereunder or under any other Loan Document, (f) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by any Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of any Loan Party or any of its Subsidiaries (g) in connection with the negotiation, preparation and filing and recordation of the Loan Documents, the Interim Order and the Final Order, (h) obtaining of approval of the Loan Documents by the Bankruptcy Court, (i) the preparation and review of pleadings, documents and reports related to the Case or any subsequent case under Chapter 7 of the Bankruptcy Code, attendance at meetings, court hearings or conferences related to the Case or any subsequent case under Chapter 7 of the Bankruptcy Code and (j) general monitoring of the Case or any subsequent case under Chapter 7 of the Bankruptcy Code (each and all of the foregoing, the "**Indemnified Liabilities**"). The foregoing to the contrary notwithstanding, neither Borrower nor any other Loan Party shall have any obligation to any Indemnified Person under this **Section 11.3** with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, or attorneys. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower or any other Loan Party was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower or such Loan Party with respect thereto. **WITHOUT**

LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.

12. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Borrower, any other Loan Party or Lender, as the case may be, they shall be sent to the respective address set forth below:

If to Borrower: **GROEB FARMS, INC.**
10464 Bryan Highway
Onsted, Michigan 49265
Attn: Jack Irvin
Fax: (517) 467-2840
Email: jack@groebfarms.com

with courtesy copies to
(which shall not constitute
Notice for purposes of this
Section 12):

FOLEY & LARDNER LLP
777 East Wisconsin Avenue, Suite 3800
Milwaukee, Wisconsin 53202
Attn: Patricia J. Lane
Fax: (414) 297-4900
Email: plane@foley.com

If to Lender: **HC CAPITAL HOLDINGS 0909A, LLC**
c/o Peak Rock Capital
13413 Galleria Circle, Suite Q-300
Austin, TX 78738
Attn: Robert M. Strauss
Fax: (512) 765-6530
Email: Strauss@peakrockcapital.com

with courtesy copies to
(which shall not constitute
Notice for purposes of this
Section 12):

KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Attn: Leonard Klingbaum
Fax: (212) 446-6460
Email: Leonard.Klingbaum@kirkland.com

Any party hereto may change the address at which it is to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 12, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment). Any notice given by Lender to Borrower as provided in this Section 12 shall be deemed sufficient notice as to all Loan Parties, regardless of whether each Loan Party is sent a separate copy of such notice or whether each Loan Party is specifically identified in such notice.

13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO AS WELL AS ALL CLAIMS, CONTROVERSIES OR DISPUTES ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (OTHER THAN ITS CONFLICT OF LAWS RULES AND EXCEPT TO THE EXTENT THE LAW OF ANY OTHER JURISDICTION APPLIES AS TO THE PERFECTION OR ENFORCEMENT OF LENDER'S LIEN IN ANY COLLATERAL AND EXCEPT TO THE EXTENT EXPRESSLY PROVIDED TO THE CONTRARY IN ANY LOAN DOCUMENT) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA (INCLUDING THE BANKRUPTCY CODE).

(b) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY LOAN PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY OBLIGATIONS HEREUNDER OR THEREUNDER, MUST BE BROUGHT IN THE BANKRUPTCY COURT AND, IF THE BANKRUPTCY COURT DOES NOT HAVE (OR ABSTAINS FROM) JURISDICTION, SUCH PROCEEDING MAY BE BROUGHT IN THE COURTS OF THE STATES OF NEW YORK OR MICHIGAN, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE EASTERN DISTRICT OF MICHIGAN AND APPELLATE COURTS OF ANY OF THE FOREGOING. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND AGREES THAT THE BANKRUPTCY COURT SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER, ON THE ONE HAND, AND LENDER, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT BORROWER ACKNOWLEDGES THAT ANY APPEALS FROM THE BANKRUPTCY COURT MAY HAVE TO BE HEARD BY A COURT OTHER THAN THE BANKRUPTCY COURT; PROVIDED, FURTHER, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE LENDER BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE SECURED OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER. EACH LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, 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 LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. TO THE EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL (RETURN RECEIPT REQUESTED) DIRECTED TO IT AT ITS ADDRESS FOR NOTICES AS PROVIDED FOR IN SECTION 13. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH OTHER LOAN PARTY AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER AND EACH OTHER LOAN PARTY AND LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14. ASSIGNMENTS; SUCCESSORS. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that neither Borrower nor any other Loan Party may assign this Agreement or any other Loan Document or any rights or duties hereunder or under any of the other Loan Documents without Lender's prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lender shall release Borrower or any other Loan Party from its Obligations. Lender may assign this Agreement and the other Loan

Documents in whole or in part and its rights and duties hereunder or grant participations in the Obligations hereunder and thereunder and no consent or approval by Borrower or any other Loan Party is required in connection with any such assignment or participation; provided, however, if a payment made to any assignee of Lender would be subject to U.S. federal withholding tax imposed by FATCA if such assignee were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such assignee shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with its obligations under FATCA and to determine that such assignee has complied with such assignee's obligations under FATCA or to determine the amount to deduct and withhold from such payment.

15. AMENDMENTS; WAIVERS. No failure by Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Lender in exercising the same, will operate as a waiver thereof. No amendment of any provision of this Agreement or of any of the other Loan Documents will be effective unless it is in writing and signed by Lender and Borrower, and then only to the extent specifically stated. No waiver by Lender of any provision of this Agreement or of any of the other Loan Documents will be effective unless it is in writing and signed by Lender, and then only to the extent specifically stated. No waiver or amendment by Lender on any occasion shall affect or diminish Lender's rights thereafter to require strict performance by Borrower and each other Loan Party of any provision of this Agreement. Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Lender may have. The Lender may require a written amendment to this Agreement in connection with any changes to any Schedule of the Information Certificate which Borrower makes to such Schedule of Information as permitted under this Agreement to reflect such changes to such Schedule of Information.

16. TAXES.

(a) All payments made by Borrower or any other Loan Party hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, Borrower shall comply with the next sentence of this Section 16(a). If any Taxes are so levied or imposed, Borrower agrees to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Lender's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrower will furnish to Lender as promptly as possible after the date the payment of any Tax is due pursuant to Applicable Law, certified copies of tax receipts evidencing such payment by Borrower.

(b) Borrower agrees to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document.

17. GENERAL PROVISIONS.

17.1 **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrower, each Guarantor which is a party hereto and Lender.

17.2 **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender or any Loan Party, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 **Debtor-Creditor Relationship.** The relationship between the Lender, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. Lender shall not have (and shall not be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated

thereby, and there is no agency or joint venture relationship between Lender, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.6 **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

17.7 **Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by Borrower, any other Loan Party or any Guarantor or the transfer to Lender of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of Lender related thereto, the liability of Borrower, such other Loan Party or such Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made and all of Lender's Liens in the Collateral shall be automatically reinstated without further action.

17.8 **Confidentiality.**

(a) Lender agrees that material, non-public information regarding the Loan Parties and their respective Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Lender in a confidential manner, and shall not be disclosed by Lender to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to Lender and to employees, directors and officers of Lender (the Persons in this clause (i), "Lender Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of Lender, provided that any such Subsidiary or Affiliate shall have agreed in writing for Borrower's benefit to receive such information hereunder subject to the terms of this Section 17.8, (iii) as may be required by regulatory authorities, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrower, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrower with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrower pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Lender or Lender Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing for Borrower's benefit to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; (x) to equity owners of each Loan Party and (xi) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Lender may use the name, logos, and other insignia of the Loan Parties and the Maximum Revolver Amount provided hereunder in any "tombstone" or comparable advertising, on its website or in other marketing materials of Lender, in each case with the prior written approval of Borrower (not to be unreasonably withheld, conditioned or delayed).

17.9 **Lender Expenses.** Borrower and each other Loan Party agrees to pay the Lender Expenses on the earlier of (a) the first day of the month following the date on which such Lender Expenses were first incurred, or (b) the date on which demand therefor is made by Lender, and Borrower and each other Loan Party agrees that its obligations contained in this Section 17.9 shall survive payment or satisfaction in full of all other Obligations.

17.10 **Setoff.** Upon the occurrence and during the continuance of any Default or Event of Default, Lender may at any time, in its sole discretion and without demand or notice to anyone, setoff any liability owed to Borrower, any other Loan Party or any Guarantor by Lender against any of the Obligations, whether or not due.

17.11 **Survival.** All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as any of the Obligations are outstanding and unpaid and so long as the obligation of Lender to provide extensions of credit hereunder has not expired or been terminated.

17.12 **Patriot Act.** Lender hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act. In addition, if Lender is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Loan Parties, and (b) OFAC/PEP searches and customary individual background checks of the Loan Parties' senior management and key principals, and Borrower, each other Loan Party agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Expenses hereunder and be for the account of Borrower.

17.13 **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.14 **Bank Product Providers.** Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Lender is acting. Lender hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Lender as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Lender and the right to share in payments and collections of the Collateral as more fully set forth herein and in the other Loan Documents. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Lender shall have the right, but shall have no obligation, to establish, maintain, relax, or release Reserves in respect of the Bank Product Obligations and that if Reserves are established there is no obligation on the part of Lender to determine or ensure whether the amount of any such reserve is appropriate or not. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or any other Loan Party.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered under seal as of the date first above written.

BORROWER:

GROEB FARMS INC.

By: 

Name: Jack M. Irvin, Jr.

Title: Vice-President and Chief Financial Officer

LENDER:

HC CAPITAL HOLDINGS 0909A, LLC

By: 
Name: Robert M. Strauss
Title: Managing Director

Schedule 1.1

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

“Account” means an account (as that term is defined in Article 9 of the Code).

“Account Debtor” means an account debtor (as that term is defined in the Code).

“Additional Cash Collateral” means, the cash collateral in the original amount of approximately \$1,000,000 deposited by Pledgors in deposit accounts maintained with Lender and pledged by Pledgors to Lender pursuant to the Pledge Agreements and subject to Control Agreements in favor of Lender.

“Additional Documents” has the meaning specified therefor in Section 6.15 of this Agreement.

“Advances” has the meaning specified therefor in Section 2.1(a) of this Agreement.

“Affiliate” means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of the definition of Eligible Accounts and Section 7.12 of this Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of the board of directors or equivalent governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Aggregate Maximum Loan Balance” means the sum of Advances, plus Prepetition Advances, plus Prepetition Term Loans, in each case outstanding at such time.

“Agreement” means this Senior Secured Superpriority Priming Debtor-In-Possession Credit and Security Agreement to which this Schedule 1.1 is attached.

“Applicable Law” means as to any Person, all statutes, rules, regulations, orders, or other requirements having the force of law and applicable to such Person, and all court orders and injunctions, and/or similar rulings applicable to such Person, in each case of or by any Governmental Authority, or court, or tribunal which has jurisdiction over such Person, or any property of such Person.

“Approved Budget” means a 13-week forecast of projected receipts and disbursements in form, scope and substance acceptable to and approved in writing by Lender in its sole discretion. The initial Approved Budget is attached hereto as Exhibit G..

“Authorized Person” means any one of the individuals identified on Schedule A-2, as such Schedule is updated from time to time by written notice from Borrower to Lender.

“Availability” means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances under Section 2.1 of this Agreement (after giving effect to all then outstanding Obligations).

“Avoidance Actions” means, the Loan Parties’ claims and causes of action under Section 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

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

“Bank Product Agreements” means those agreements entered into from time to time by Borrower or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products, including, without limitation, all Cash Management Documents.

“Bank Product Collateralization” means providing cash collateral (pursuant to documentation reasonably satisfactory to Lender) to be held by Lender for the benefit of the Bank Product Provider in an amount determined by Lender as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

“Bank Product Obligations” means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by a Loan Party or its Subsidiaries to Lender or another Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and (b) all Hedge Obligations.

“Bank Product Provider” means Lender or any of its Affiliates, or any other institution, that provide Bank Products to Borrower or its Subsidiaries.

“Bank Product Reserve Amount” means, as of any date of determination, the Dollar amount of reserves that Lender has determined are necessary or appropriate to establish (based upon Lender’s reasonable determination of credit and operating risk exposure to Borrower or its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

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

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Michigan or any other court having jurisdiction over the Case from time to time.

“Benefit Plan” means a “defined benefit plan” (as defined in Section 3(35) of ERISA) for which Borrower or any of its Subsidiaries or ERISA Affiliates has been an “employer” (as defined in Section 3(5) of ERISA) within the past six years.

“Board of Directors” means the board of directors (or comparable managers) of Borrower, any other Loan Party or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

“Books” means books and records (including Borrower’s or any other Loan Party’s Records indicating, summarizing, or evidencing Borrower’s or such other Loan Party’s assets (including the Collateral) or liabilities, Borrower’s or such other Loan Party’s Records relating to Borrower’s or such other Loan Party’s business operations or financial condition, or Borrower’s or such other Loan Party’s Goods or General Intangibles related to such information).

“Borrower” means Groeb Farms, Inc., a Michigan corporation.

“Borrowing” means a borrowing consisting of Advances (i) requested by Borrower, (ii) made by Lender pursuant to Section 2.6.

(C), or (iii) a Protective Advance.

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

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

(b) the *lower* of

(i) \$11,000,000, or

(ii) (A) the lower of

(I) 75% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the Value of Eligible Inventory consisting of raw materials, or

(II) 85% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the most recently determined Net Liquidation

Percentage times the Value of Eligible Inventory consisting of raw materials, plus

(B) the lower of

(I) 75% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the Value of Eligible Inventory consisting of finished goods, or

(II) 85% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the most recently determined Net Liquidation Percentage *times* the Value of Eligible Inventory consisting of finished goods, plus

(C) the *lower of*

(I) 42% (or such lesser percentage as in effect under the Prepetition Credit Facility immediately prior to the Petition Date) *times* the Value of Eligible Inventory consisting of mesquite honey so acquired by Borrower in calendar year 2013, or

(II) 100% of the amount of the Eligible Additional Cash Collateral, plus

(c) 100% of the amount of the Eligible Original Cash Collateral, plus

(d) 100% of the amount of the Eligible Additional Cash Collateral, minus

(e) the aggregate amount of Reserves established by Lender.

“Borrowing Base Certificate” means a form of borrowing base certificate in form and substance reasonably acceptable to Lender.

“Borrowing Request” a written request for a Borrowing substantially in the form of Exhibit F.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close pursuant to the rules and regulations of the Federal Reserve System.

“Capitalized Lease Obligation” means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Carve-Out” has the meaning specified in the Orders, as applicable.

“Carve-Out Cap” has the meaning specified in the Orders, as applicable.

“Carve-Out Reserves” means, at any time, such reserves as Lender, from time to time, determines in its Permitted Discretion as being appropriate to reflect (i) the remaining available amount of the Carve-Out Cap at such time, if any and (ii) the accrued but unpaid fees, costs and expenses of professionals retained by Borrower and the other Loan Parties and the Creditor’s Committee as such time, in each case as set forth in the most recently delivered Borrowing Base Certificate.

“Case” means the case under Chapter 11 of the Bankruptcy Code with respect to Borrower, with respect to which Borrower is the debtor and debtor-in-possession.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing

within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and having one of the three highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having combined capital and surplus of not less than \$250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$250,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

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

"Cash Management Documents" means the agreements governing each of the Cash Management Services of Lender or any other institution utilized by Borrower, which agreements shall currently include the Master Agreement for Treasury Management Services or other applicable treasury management services agreement, "Acceptance of Services", the "Service Description" governing each such treasury management service used by Borrower, and all replacement or successor agreements which govern such Cash Management Services of Lender or any other institution.

"Cash Management Transition Period" has the meaning specified in Section 6.12(i) of this Agreement.

"CFC" means a controlled foreign corporation (as that term is defined in the IRC).

"Change of Control" means that (a) the Institutional Subordinated Creditors fail to directly own and control at least 63.6% of the Stock of Borrower having the right to vote for the election of members of the Board of Directors of Borrower, (b) the Groeb Family Subordinated Creditors and their children, grandchildren or other relatives, or trusts for their benefit, fail to directly own and control at least 23.4% of the Stock of Borrower having the right to vote for the election of members of the Board of Directors of Borrower, or (c) a majority of the members of the Board of Directors of Borrower do not constitute Continuing Directors.

"Chattel Paper" means chattel paper (as that term is defined in the Code), and includes tangible chattel paper and electronic chattel paper.

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

"Code" means the New York Uniform Commercial Code, as in effect from time to time; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies. To the extent that defined terms set forth herein shall have different meanings under different Articles under the Uniform Commercial Code, the meaning assigned to such defined term under Article 9 of the Uniform Commercial Code shall control.

"Collateral" means each of the assets referred to in Section 3 hereof and all of Borrower's:

- (a) Accounts;
- (b) Books;

- (c) Chattel Paper;
- (d) Deposit Accounts, money, cash and Cash Equivalents;
- (e) Goods, including Equipment and Fixtures;
- (f) General Intangibles;
- (g) Inventory;
- (h) Investment Related Property;
- (i) Negotiable Collateral;
- (j) Supporting Obligations;
- (k) Commercial Tort Claims and, subject to entry of the Final Order, proceeds from Avoidance Actions;
- (l) Upon entry of the Final Order, proceeds of Avoidance Actions;
- (m) Other assets of such Loan Party that now or hereafter come into the possession, custody, or control of Lender (or its agent or designee); and

(n) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles, Inventory, Investment Related Property, Negotiable Collateral, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (the “Proceeds”). Without limiting the generality of the foregoing, the term “Proceeds” includes whatever is receivable or received when Investment Related Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to Borrower or Lender from time to time with respect to any of the Investment Related Property.

In addition, for purposes of this Agreement, “Collateral” shall also include all “Collateral” as described in the Pledge Agreements.

“Collateral Access Agreement” means a landlord’s disclaimer and consent, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Books, Equipment, Accounts or Inventory of any Loan Party or of any of its Subsidiaries, in each case, in favor of Lender with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, warehouseman, processor, consignee or other Person and in form and substance reasonably satisfactory to Lender.

“Collection Account” means the Deposit Account identified on Schedule A-1.

“Collections” means *all* cash, checks, notes, instruments, and other items of payment (including insurance Proceeds, cash Proceeds of asset sales, rental Proceeds, and tax refunds).

“Commercial Tort Claims” means commercial tort claims (as that term is defined in the Code), and includes those commercial tort claims listed on Schedule 5.6(d) to the Information Certificate.

“Compliance Certificate” means a certificate substantially in the form of Exhibit A delivered by the chief financial officer of Borrower to Lender.

“Confidential Information” has the meaning specified therefor in Section 17.8 of this Agreement.

“Continuing Director” means (a) any member of the Board of Directors who was a director (or comparable manager) of Borrower on the Closing Date, and (b) any individual who becomes a member of the Board of Directors of Borrower after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors by a majority of the Continuing Directors, but excluding any such individual originally proposed for election in opposition to the Board of Directors in office at the Closing Date in an actual or threatened election contest relating to the election of the directors (or comparable managers) of Borrower and whose initial assumption of office resulted from such contest or the settlement thereof.

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to Lender, executed and delivered by a Loan Party or any of its Subsidiaries, Lender, and the applicable securities intermediary (with respect to a Securities Account), the applicable bank (with respect to a Deposit Account) or issuer (with respect to uncertificated securities).

“Copyrights” means any and all rights in any works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule 5.25(b) to the Information Certificate, (iii) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Loan Party’s rights corresponding thereto throughout the world.

“Copyright Security Agreement” means each Copyright Security Agreement executed and delivered by the applicable Loan Party in favor of Lender, in form and substance reasonably acceptable to Lender.

“Covenant Threshold” means that Availability is \$5,000,000 or more, as determined by Lender.

“Credit Facility” means the Revolving Credit Facility.

“Creditor’s Committee” means any official committee of unsecured creditors duly appointed in the Case, if any.

“Daily Balance” means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

“Daily Three Month LIBOR” means the rate per annum (rounded up to the nearest whole 1/8th of one percent) for United States dollar deposits quoted by Lender for the purpose of calculating the effective Interest Rate for loans that reference Daily Three Month LIBOR as the Inter-Bank Market Offered Rate in effect from time to time for the 3 month delivery of funds in amounts approximately equal to the principal amount of such loans. Borrower understands and agrees that Lender may base its quotation of the Inter-Bank Market Offered Rate upon such offers or other market indicators of the Inter-Bank Market as Lender in its discretion deems appropriate, including but not limited to the rate offered for U.S. dollar deposits on the London Inter-Bank Market. When interest is determined in relation to Daily Three Month LIBOR, each change in the interest rate shall become effective each Business Day that Lender determines that Daily Three Month LIBOR has changed.

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

“Deferred Prosecution Agreement” means that certain Deferred Prosecution Agreement signed by Borrower on or about February 11, 2013 and filed on or about February 15, 2013, between Borrower and the USAO NDIL, approved by the United States District Court for the Northern District of Illinois, Eastern Division.

“Deferred Prosecution Dismissal” means the dismissal with prejudice of the information filed by the USAO NDIL against Borrower pursuant to the Deferred Prosecution Agreement and the related expiration of the Deferred Prosecution Agreement.

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

“Designated Account” means the operating Deposit Account of Borrower at Lender identified on Schedule

D-1

"Dilution" means, as of any date of determination, a percentage that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, deductions, or other dilutive items as determined by Lender with respect to Borrower's Accounts, by (b) Borrower's billings with respect to Accounts.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point for each percentage point by which Dilution is in excess of 5%.

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

"Eligible Additional Cash Collateral" means, as of any date of determination, the amount of the Additional Cash Collateral then pledged by the Pledgors to Lender pursuant to the Pledge Agreements and subject to Control Agreements but only to the extent that such pledge and such cash continue to be on deposit and available to Lender; provided, however, any such Additional Cash Collateral shall not be Eligible Additional Cash Collateral in any of the following circumstances:

(a) such Additional Cash Collateral is not subject to valid and perfected first priority Lender's Lien or is subject to any other Lien (other than unperfected, inchoate Liens for unpaid taxes, assessments or other governmental charges or levies that are not yet delinquent);

(b) the applicable Pledgor of any such Additional Cash Collateral is contesting the validity, enforceability or priority of Lender's Lien in such Additional Cash Collateral;

(c) the applicable Pledgor of any such Additional Cash Collateral is subject to an Insolvency Proceeding, is not solvent or has gone out of business or Lender has received notice of an imminent Insolvency Proceeding with respect to such Pledgor; or

(d) such Additional Cash Collateral is otherwise deemed ineligible in whole or in part by Lender in its reasonable discretion as a result of the occurrence after the date of this Agreement of any event or circumstance with respect to such Additional Cash Collateral or the applicable Pledgor which Lender, in its reasonable discretion, determines impairs the value of such Additional Cash Collateral or the enforceability, perfection or priority of Lender's first priority Lien in such Additional Cash Collateral; provided, however, that Lender shall provide Borrower and the other Pledgors with written notice of such ineligibility and the opportunity, within 5 Business Days of such written notice, to contribute additional pledged cash collateral in the amount of the Additional Cash Collateral that has been deemed ineligible by Lender.

"Eligible Cash Collateral" means, collectively, the cash collateral deposited by Pledgors in deposit accounts maintained with Lender or any depository bank and pledged by Pledgors to Lender pursuant to the Pledge Agreements and, in each case, subject to a Control Agreement in favor of Lender; provided, however, any such cash collateral shall not be Eligible Cash Collateral in any of the following circumstances:

(a) such cash collateral is not subject to valid and perfected first-priority Lender's Lien or is subject to any other Lien (other than unperfected, inchoate Liens for unpaid taxes, assessments or other governmental charges or levies that are not yet delinquent);

(b) the applicable Pledgor of any such cash collateral is contesting the validity, enforceability or priority of Lender's Lien in such cash collateral;

(c) the applicable Pledgor of any such cash collateral is subject to an Insolvency Proceeding, is not solvent or has gone out of business or Lender has received notice of an imminent Insolvency Proceeding with respect to such Pledgor; or

(d) such cash collateral is otherwise deemed ineligible in whole or in part by Lender in its reasonable discretion as a result of the occurrence after the date of this Agreement of any event or circumstance with respect to such cash collateral or the applicable Pledgor which Lender, in its reasonable discretion, determines impairs the value of such cash collateral or the enforceability, perfection or priority of Lender's first-priority Lien in such cash collateral; provided, however, that Lender shall provide Borrower and the other Pledgors with written notice of such ineligibility and the opportunity, within 5 Business Days of such written notice, to contribute additional pledged cash collateral in the amount of the cash collateral that has been deemed ineligible by Lender.

"Eligible Accounts" means those Accounts created by Borrower in the ordinary course of its business, that arise out of Borrower's sale or lease of Goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or

more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Lender in Lender's reasonable discretion. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, credits and unapplied cash. Eligible Accounts shall not include the following:

- (a) Accounts that the Account Debtor has failed to pay within the earlier of 90 days after the original invoice date or 60 days after the original due date;
- (b) Accounts with selling terms of more than 60 days;
- (c) Accounts owed by an Account Debtor (or its Affiliates) where twenty-five percent (25%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) or (b) above or clauses (i) or (s) below;
- (d) Accounts with respect to which the Account Debtor is an Affiliate, agent or equity owner of Borrower or an employee or agent of Borrower or any Affiliate of Borrower;
- (e) Accounts arising in a transaction wherein Goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, or any other terms by reason of which the payment by the Account Debtor may be conditional or contingent;
- (f) Accounts that are not payable in Dollars;
- (g) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or any state thereof or under the laws of Canada or any province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (x) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Lender (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Lender and is directly drawable by Lender, or (y) the Account is guaranteed pursuant to an approved working capital guarantee from the Export-Import Bank of the United States in favor of Lender and acceptable to Lender in all respects;
- (h) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrower has complied, to the reasonable satisfaction of Lender, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States;
- (i) Accounts with respect to which the Account Debtor is a creditor of Borrower, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, or dispute;
- (j) That portion of Accounts which reflect a reasonable reserve for warranty claims or returns or amounts which are owed to account debtors, including those for rebates, allowances, co-op advertising, new store allowances or other deductions;
- (k) Accounts owing by a single Account Debtor or group of Affiliated Account Debtors whose total obligations owing to Borrower exceed fifteen percent (15%) of the aggregate amount of all otherwise Eligible Accounts (but the portion of the Accounts not in excess of the foregoing applicable percentages may be deemed Eligible Accounts), such percentage being subject to reduction if the creditworthiness of such Account Debtor deteriorates;
- (l) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent or has gone out of business, or as to which Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor;
- (m) Accounts, the collection of which, Lender, in its reasonable discretion, believes to be doubtful by reason of the Account Debtor's financial condition;
- (n) Accounts representing credit card sales or "C.O.D." sales;
- (o) Accounts that are not subject to a valid and perfected first priority Lender's Lien or that are subject to any other Lien (other than the junior Permitted Lien in favor of the Institutional Subordinated Creditors);

(p) Accounts that consist of progress billings (such that the obligation of the Account Debtors with respect to such Accounts is conditioned upon Borrower's satisfactory completion of any further performance under the agreement giving rise thereto) or retainage invoices;

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

(r) that portion of Accounts which represent finance charges, service charges, sales taxes or excise taxes;

(s) that portion of Accounts which has been restructured, extended, amended or otherwise modified;

(t) bill and hold invoices, except those with respect to which Lender shall have received an agreement in writing from the Account Debtor, in form and substance satisfactory to Lender, confirming the unconditional obligation of the Account Debtor to take the Goods related thereto and pay such invoice, so long as such Accounts satisfy all other criteria for Eligible Accounts hereunder;

(u) Accounts which have not been invoiced;

(v) Accounts constituting (i) Proceeds of copyrightable material unless such copyrightable material shall have been registered with the United States Copyright Office, or (ii) Proceeds of patentable inventions unless such patentable inventions have been registered with the United States Patent and Trademark Office; and

(w) Accounts or that portion of Accounts otherwise deemed ineligible by Lender in its reasonable discretion.

Any Accounts which are not Eligible Accounts shall nonetheless constitute Collateral.

"Eligible Equipment" means Equipment of Borrower which is subject to a valid and perfected first priority Lender's Lien, is not subject to a Lien in favor of any Person other than Lender, is designated by Lender as eligible, and covered by the most recent acceptable appraisal received by Lender. All Equipment which does not constitute Eligible Equipment shall nonetheless constitute Collateral.

"Eligible New Equipment" shall mean any Equipment acquired by Borrower on or after October 2, 2012 which is in good order, repair, operating and marketable condition (ordinary wear and tear excepted) and in each case acceptable to Lender in its sole discretion. In general, Eligible New Equipment shall not include:

- (a) Equipment at premises other than those owned or leased and controlled by Borrower, unless Lender shall have entered into a Collateral Access Agreement with the owner or operator of such premises and shall have received such other documents, instruments and agreements as Lender may request;
- (b) Equipment subject to a security interest or Lien in favor of any Person other than Lender;
- (c) Equipment located outside the United States of America or Canada (other than Quebec);
- (d) Equipment that is not subject to the first priority, valid and perfected security interest of Lender;
- (e) damaged or defective Equipment or Equipment not used or usable in the ordinary course of Borrower's business as presently conducted; or
- (f) Equipment that is warehouse racking.

Any Equipment which is not Eligible New Equipment shall nonetheless constitute Collateral.

"Eligible New Racking" shall mean any warehouse racking acquired by Borrower on or after October 2, 2012 which is in good order, repair, operating and marketable condition (ordinary wear and tear excepted) and in each case acceptable to Lender in its sole discretion. In general, Eligible New Racking shall not include:

- (a) warehouse racking at premises other than those owned or leased and controlled by Borrower, unless Lender shall have entered into a Collateral Access Agreement with the owner or operator of such premises and shall have received such other documents, instruments and agreements as Lender may request;
- (b) warehouse racking subject to a security interest or Lien in favor of any Person other than Lender;
- (c) warehouse racking located outside the United States of America or Canada (other than Quebec);
- (d) warehouse racking that is not subject to the first priority, valid and perfected security interest of Lender;
- (e) damaged or defective warehouse racking or warehouse racking not used or usable in the ordinary course of Borrower's business as presently conducted; or
- (f) warehouse racking that is Eligible Equipment or Eligible New Equipment.

Any warehouse racking which is not Eligible New Racking shall nonetheless constitute Collateral.

"Eligible Inventory" means Inventory consisting of raw materials and finished goods held for sale in the ordinary course of Borrower's business, that complies with each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Lender in Lender's reasonable discretion. An item of Inventory shall not be included in Eligible Inventory if:

- (a) Borrower does not have good, valid, and marketable title thereto;
- (b) it consists of work-in-process Inventory, components which are not part of finished goods, supplies used or consumed in Borrower's business, or Goods that constitute spare parts or maintenance parts (other than after-market parts), packaging and shipping materials, or sample inventory or customer supplied parts or Inventory;
- (c) it consists of Inventory that is perishable or live or where less than 8 weeks remain until the Inventory's stated expiration or "sell-by" or "use-by" date;
- (d) Borrower does not have actual and exclusive possession thereof (either directly or through a bailee or agent of Borrower);
- (e) it is not located at one of the locations in the continental United States set forth on Schedule 5.29 to the Information Certificate, except for Transfer Eligible Inventory in an aggregate amount not to exceed \$150,000 at any time;
- (f) it is stored at locations holding Inventory of Borrower valued at less than \$100,000;
- (g) it is in-transit to or from a location of Borrower, except for Transfer Eligible Inventory in an aggregate amount not to exceed \$150,000 at any time;
- (h) it is located on real property leased by Borrower or in a contract warehouse or on the real property of any other Person, in each case, unless it is subject to a Collateral Access Agreement executed by the lessor, warehouseman or other Person, as the case may be, and unless it is segregated or otherwise separately identifiable from Goods of others, if any, stored on the premises;
- (i) it is the subject of a bill of lading or other document of title;
- (j) it is on consignment from any consignor; or on consignment to any consignee or subject to any bailment unless the consignee or bailee has (i) executed an agreement with Lender, and (ii) provided evidence acceptable to Lender that Borrower has properly perfected a first priority security interest in such consigned Inventory and has properly notified in writing the other creditors of consignee who hold an interest in such Inventory of Borrower's security interest in such Inventory, and (iii) Borrower has taken such other actions with respect to such consigned Inventory as Lender may reasonably request;
- (k) it is not subject to a valid and perfected first priority Lender's Lien;

- (l) it consists of goods returned, rejected or put on hold by Borrower's customers;
- (m) it consists of Goods that are damaged, contaminated, spoiled, defective, obsolete or slow moving;
- (n) Inventory that Borrower has returned, has attempted to return, is in the process of returning or intends to return to the vendor of such Inventory;
- (o) it consists of Goods that are restricted or controlled, or regulated items;
- (p) it consists of Goods that are bill and hold Goods;
- (q) it is subject to third party trademark, licensing or other proprietary rights;
- (r) it consists of customer-specific Inventory not supported by purchase orders; or
- (s) Inventory otherwise deemed ineligible by Lender in its reasonable discretion.

Any Inventory which is not Eligible Inventory shall nonetheless constitute Collateral.

"Eligible Original Cash Collateral" means, as of any date of determination, the amount of the Original Cash Collateral then pledged by the Pledgors to Lender pursuant to the Pledge Agreement and subject to the Control Agreements; provided, however, any such Original Cash Collateral shall not be Eligible Original Cash Collateral in any of the following circumstances:

- (a) such Original Cash Collateral is not subject to valid and perfected first priority Lender's Lien or is subject to any other Lien (other than unperfected, inchoate Liens for unpaid taxes, assessments or other governmental charges or levies that are not yet delinquent);
- (b) the applicable Pledgor of any such Original Cash Collateral is contesting the validity, enforceability or priority of Lender's Lien in such Original Cash Collateral;
- (c) the applicable Pledgor of any such Original Cash Collateral is subject to an Insolvency Proceeding, is not solvent or has gone out of business or Lender has received notice of an imminent Insolvency Proceeding with respect to such Pledgor; or
- (d) such Original Cash Collateral is otherwise deemed ineligible in whole or in part by Lender in its reasonable discretion as a result of the occurrence after the date of this Agreement of any event or circumstance with respect to such Original Cash Collateral or the applicable Pledgor which Lender, in its reasonable discretion, determines impairs the value of such Original Cash Collateral or the enforceability, perfection or priority of Lender's first priority Lien in such Original Cash Collateral; provided, however, that Lender shall provide Borrower and the other Pledgors with written notice of such ineligibility and the opportunity, within 5 Business Days of such written notice, to contribute additional pledged cash collateral in the amount of the Original Cash Collateral that has been deemed ineligible by Lender.

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

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

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and

feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

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

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

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

“ERISA Affiliate” means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of any Loan Party or its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which any Loan Party or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 and 430 of the IRC, any Person subject to ERISA that is a party to an arrangement with any Loan Party or any of its Subsidiaries and whose employees are aggregated with the employees of a Loan Party or its Subsidiaries under IRC Section 414(o).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the IRC or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

“Event of Default” has the meaning specified therefor in Section 9 of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Farm Product Lien Amount” means any amount which Borrower owes to a producer or seller of farm products which is secured by a Lien.

“Farm Products Reserve” means a reserve equal to the Farm Product Lien Amount determined by Lender from time to time in its sole discretion.

“FATCA” means Sections 1471 through 1474 of the IRC as of the date of this Agreement (or any amendment or successor version that is substantially comparable) and any current or future regulations or official interpretations thereof.

“Final Order” means an order of the Bankruptcy Court that is satisfactory in form and substance to Lender in its sole discretion, which order shall (w) be satisfactory in form and substance to Lender in its sole discretion, (x) have been entered and on such prior notice to such parties as may be reasonably satisfactory to Lender and (y) not have been vacated, reversed, modified, amended or stayed.

“Fiscal Month” means any of the twelve periods comprising Borrower’s Fiscal Year, determined in accordance with Borrower’s historical practice.

“Fiscal Quarter” means a period of three consecutive Fiscal Months ending on or about March 31, June 30, September 30 or December 31.

“Fiscal Year” means a period of twelve Fiscal Months ending on or about December 31.

“Fixtures” means fixtures (as that term is defined in the Code).

“Foreign Subsidiary” means, with respect to any Person, any Subsidiary of such Person that is not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia and any Subsidiary that holds no material assets other than interests in Foreign Subsidiaries.

“FSA” means the Food Service Security Act of 1985, as amended and in effect from time to time, and regulations issued from time to time thereunder.

“Funding Date” means the date on which a Borrowing occurs.

“GAAP” means generally accepted accounting principles as in effect in the United States on the Closing Date, consistently applied; (i) except for any change in accounting practices to the extent that, due to a promulgation of the Financial Accounting Standards Board changing or implementing any new accounting standard, Borrower either (a) is required to implement such change, or (b) for future periods will be required to and for the current period may in accordance with generally accepted accounting principles implement such change, for its financial statements to be in conformity with generally accepted accounting principles (any such change is hereafter referred to a “Required GAAP Change”), provided that Borrower shall fully disclose in such financial statements any such Required GAAP Change and the effects of the Required GAAP Change on Borrower’s income, retained earnings or other accounts, as applicable, and (ii) except that all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

“General Intangibles” means general intangibles (as that term is defined in the Code), and includes payment intangibles, contract rights, rights to payment, rights under Hedge Agreements (including the right to receive payment on account of the termination (voluntarily or involuntarily) of any such Hedge Agreements), rights arising under common law, statutes, or regulations, choses or things in action, goodwill, Intellectual Property, Intellectual Property Licenses, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, Goods, Investment Related Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

“Goods” means goods (as that term is defined in the Code).

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, certificate of formation, by-laws, operating agreement, limited liability company agreement, shareholder agreement, investment agreement (including the Investment Agreements) or other organizational documents of such Person.

“Governmental Authority” means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Groeb Family Subordinated Creditors” means Ernest L. Groeb, Troy L. Groeb, E. Jeanne Groeb and E. Jeanne Groeb, as Trustee of the E. Jeanne Groeb Trust dated April 24, 2001.

“Groeb Family Subordinated Creditors Subordination Agreement” means that certain Subordination Agreement by and between Ernest L. Groeb, as shareholders’ representative, as subordinated creditor, and Lender, as senior creditor, as acknowledged by Ernest L. Groeb, Troy L. Groeb, E. Jeanne Groeb and E. Jeanne Groeb, as Trustee of the E. Jeanne Groeb Trust dated April 24, 2001, as amended, and as acknowledged by Borrower.

“Guarantors” means (a) each Subsidiary of Borrower that becomes a Guarantor as required by this Agreement, and (b) each other Person that becomes a guarantor after the Closing Date, and each of them is a “Guarantor”.

“Guaranty” means any guaranty executed and delivered by a Guarantor in favor of Lender in form and substance reasonably satisfactory to Lender, and all of such guaranties are, collectively, the “Guaranties”.

“Hard Costs” shall mean, with respect to the purchase by Borrower of an item of Eligible New Equipment or an item of Eligible New Racking, the net cash amount actually paid to acquire title to such item, net of all incentives, trade in allowances, discounts and rebates, and exclusive of freight, delivery charges, installation costs and charges, software costs, charges and fees, warranty costs, taxes, insurance and other incidental costs or expenses and all indirect costs or expenses of any kind.

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

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

“Hedge Obligations” means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of any Loan Party or any of its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with Lender or another Bank Product Provider.

“Indebtedness” as to any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables and accrued expenses incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all net obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation. “Indebtedness” shall not include any obligations in respect of customer advances received and held in the ordinary course of business.

“Indemnified Liabilities” has the meaning specified therefor in Section 11.3 of this Agreement.

“Indemnified Person” has the meaning specified therefor in Section 11.3 of this Agreement.

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

“Institutional Subordinated Creditors” means, collectively, Argosy Investment Partners III, L.P., Marquette Capital Fund I, L.P. and Horizon Capital Partners III, L.P.

“Institutional Subordinated Creditors Subordination Agreement” means that certain Intercreditor and Subordination Agreement by and among the Institutional Subordinated Creditors, as subordinated lenders, and Lender, as senior lender, and acknowledged by Borrower.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, trade secrets, know-how, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof.

“Intellectual Property Licenses” means, with respect to any Person (the “Specified Party”), (i) any licenses or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to the

Specified Party pursuant to end-user licenses), (B) the license agreements listed on Schedule 5.25(b) to the Information Certificate, and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of the Lender's rights under the Loan Documents.

"Interest Expense" means, for any period, the aggregate of the interest expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

"Interest Rate" means an interest rate equal to Daily Three Month LIBOR, which interest rate shall change whenever Daily Three Month LIBOR changes. Notwithstanding the foregoing, in no event shall the Interest Rate be less than two percent (2.00%) per annum.

"Interest Rate Margin" means with respect to Advances under the Revolving Credit Facility, two and one half percent (2.5%) per annum.

"Interim Order" means an order of the Bankruptcy Court on an application or motion by Borrower that is reasonably satisfactory in form and substance to Lender, which order shall (w) be satisfactory in form and substance to Lender in its sole discretion, (x) have been entered and on such prior notice to such parties as may be reasonably satisfactory to Lender and (y) not have been vacated, reversed, modified, amended or stayed.

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

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business not to exceed \$100,000 in the aggregate during any Fiscal Year of Borrower, and (b) *bona fide* Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"Investment Agreements" means, collectively, that certain Investment Agreement dated as of March 16, 2007, by and among Borrower (formerly known as GF Acquisition, Inc), the Institutional Subordinated Creditors, George W. Cawman, Jr., Howard S. Goss, Thomas R. Liebermann, Jack C. Meng, John C. Morley, Lanny A. Passaro Trust, J. William Petty, Ernest L. Groeb and Troy Groeb, and that certain Investment Agreement dated as of March 31, 2010, by and among Borrower, the Institutional Subordinated Creditors, Francis H. Barker, Robert G. Bush, George W. Cawman, Jr., Ernest L. Groeb, Troy Groeb, Joellen Sullivan, Thomas R. Lieberman, Jack C. Meng, John C. Morley, P. Kim Packard, Lanny A. Passaro Trust and J. William Petty.

"Investment Related Property" means any and all investment property (as that term is defined in the Code).

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"ISP98" means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

"Key Officer" means Rolf Richter, as Chief Executive Officer and President.

"Lease" means any agreement, whether written or oral no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Leasehold Obligations Reserve" means, on any date, (i) the aggregate amount of leasehold obligations of the Loan Parties due and owing with respect to properties of a vendor, landlord, public warehouse operator or other third party bailee located in a priming jurisdiction or at a distribution center, in each case which is not subject to a Priority of Claims Waiver in form and substance reasonably satisfactory to the Lender; for each such property the amount of leasehold obligations shall be the next two months' leasehold obligations, and (ii) the aggregate amount of leasehold obligations of the Loan Parties with respect to all other Leases; for each such property the amount of leasehold obligations shall be the sum of (A) all past due rent, plus (B) one month's leasehold obligations for all such Leases subject to a mortgage in favor of Lender located in a priming jurisdiction.

"Lender" has the meaning specified therefor in the preamble to this Agreement and its successors and assigns.

“Lender-Related Persons” means Lender, together with its Affiliates, officers, directors, employees, attorneys, and agents.

“Lender’s Liens” mean the Liens granted by Borrower and the other Loan Parties and their respective Subsidiaries to Lender under the Loan Documents.

“Lender Expenses” means all (a) reasonable costs or expenses (including taxes, and insurance premiums) required to be paid by any Loan Party or any of its Subsidiaries or any Guarantor under any of the Loan Documents that are paid, advanced, or incurred by Lender, (b) reasonable out-of-pocket fees or charges paid or incurred by Lender in connection with Lender’s transactions with any Loan Party or any of its Subsidiaries or any Guarantor under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, judgment lien, litigation, bankruptcy and Code searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation contained in this Agreement to the extent applicable), and environmental audits, (c) Lender’s customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrower (whether by wire transfer or otherwise), together with any out of pocket costs and expenses incurred in connection therewith, (d) out-of-pocket charges paid or incurred by Lender resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable out-of-pocket costs and expenses paid or incurred by Lender to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) reasonable out-of-pocket examination fees and expenses (including reasonable travel, meals, and lodging) of Lender related to any inspections, exams, audits or appraisals to the extent of the fees and charges (and up to the amount of any limitation contained in this Agreement to the extent applicable), (g) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by Lender in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or Lender’s relationship with any Loan Party or any of its Subsidiaries or any Guarantor, (h) Lender’s reasonable costs and expenses (including reasonable attorneys fees) incurred in advising, structuring, drafting, reviewing, administering (including reasonable travel, meals, and lodging), or amending the Loan Documents, and (i) Lender’s reasonable costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a “workout,” a “restructuring,” or an Insolvency Proceeding concerning any Loan Party or any of its Subsidiaries or any Guarantor or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

“Lender Representatives” has the meaning specified therefor in Section 17.8(a) of this Agreement.

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

“Loan Account” has the meaning specified therefor in Section 2.8 of this Agreement.

“Loan Documents” means this Agreement, each amendment thereto, any Borrowing Base Certificate, the Control Agreements, the Cash Management Documents, the Copyright Security Agreements, the Guaranties, the Orders, the Patent Security Agreements, the Trademark Security Agreements, the Subordination Agreements, the Pledge Agreements, any note or notes executed by Borrower in connection with this Agreement and payable to Lender and any other instrument or agreement entered into, now or in the future, by any Loan Party or any of its Subsidiaries, any Guarantor or any other Person in favor of Lender in connection with this Agreement, but specifically excluding all Hedge Agreements.

“Loan Party” means Borrower and each Subsidiary of Borrower which becomes a Guarantor.

“Lockbox” means “Lockbox” as defined and described in the Cash Management Documents.

“Management Fee Subordination Agreement” means the Management Fee Subordination Agreement executed and delivered by Horizon Partners Ltd. in favor of Lender on or about the date of this Agreement.

“Margin Stock” as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Change" means (a) a material adverse change in the business, prospects, operations, results of operations, assets, liabilities or financial condition of Borrower and its Subsidiaries or their estates taken as a whole, (b) a material impairment of the ability of any Loan Party or its Subsidiaries or of any Guarantor or of their estates to perform their obligations under the Loan Documents or of the Lender's ability to enforce the Obligations or realize upon any of the collateral security for the Obligations, including, without limitation, any of the Collateral, or (c) a material impairment of the enforceability or priority of Lender's Liens with respect to any of the collateral security for the Obligations, including, without limitation, any of the Collateral, as a result of an action or failure to act on the part of any Loan Party or its Subsidiaries or of any Guarantor or of their estates.

"Material Contract" means, with respect to any Loan Party or any Subsidiary of any Loan Party, (i) each contract or agreement to which such Loan Party or such Subsidiary is a party involving aggregate consideration payable to or by such Loan Party or such Subsidiary of \$150,000 or more (other than purchase orders in the ordinary course of the business of such Loan Party or such Subsidiary), and (ii) all other contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Change.

"Material Licenses" means, with respect to any Loan Party or any Subsidiary of any Loan Party, any license, permit or other authorization which is required or necessary for any Loan Party or any Subsidiary of any Loan Party to conduct any material portion of its business or operations.

"Maturity Date" has the meaning specified therefor in Section 2.9 of this Agreement.

"Maximum Revolver Amount" is \$27,000,000 as of the date of this Agreement.

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Multiple Employer Plan" means a Plan which has two or more contributing sponsors (including any Loan Party or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

"Negotiable Collateral" means letters of credit, letter-of-credit rights, instruments, promissory notes, drafts and documents (as each such term is defined in the Code).

"Net Forced Liquidation Value" means, as to Eligible Equipment, at any time, the value of such Eligible Equipment, determined on a forced liquidation basis, as set forth in the most recent acceptable appraisal received by Lender and upon which Lender may rely, net of all operating expenses and associated costs of such liquidation, such value to be as determined from time to time by an appraisal company selected or approved by Lender, with such most recent acceptable appraisal to be in form, scope, methodology and content acceptable to Lender.

"Net Liquidation Percentage" means the percentage of the Value of Borrower's Eligible Inventory that is estimated to be recoverable in an orderly liquidation of such Eligible Inventory as set forth in the most recent acceptable appraisal received by Lender and upon which Lender may rely, net of all operating expenses and associated costs of such liquidation, such percentage to be as determined from time to time by an appraisal company selected or approved by Lender, with such most recent acceptable appraisal to be in form, scope, methodology and content acceptable to Lender.

"Net Orderly Liquidation Value" means, as to the Eligible Equipment, Eligible New Equipment and Eligible New Racking, at any time, the value of such Eligible Equipment, Eligible New Equipment or Eligible New Racking, as applicable, determined on an orderly liquidation basis, as set forth in the most recent acceptable appraisal received by Lender and upon which Lender may rely, net of all operating expenses and associated costs of such liquidation, such value to be as determined from time to time by an appraisal company selected or approved by Lender, with such most recent acceptable appraisal to be in form, scope, methodology and content acceptable to Lender.

"Obligations" means (a) all loans (including the Advances), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), premiums, liabilities (including all amounts charged to the Loan Account pursuant to this Agreement), obligations (including indemnification obligations), fees, Lender Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole

or in part as a claim in any such Insolvency Proceeding), guaranties, and all covenants and duties of any other kind and description owing by any Loan Party or any Guarantor pursuant to or evidenced by this Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, sole, joint, several or joint and several, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Loan Party or any Guarantor is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) all Bank Product Obligations. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

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

“Overadvance Amount” has the meaning specified therefor in Section 2.4f of this Agreement.

“Orders” mean the Interim Order and the Final Order, collectively.

“Original Cash Collateral” means the cash collateral in the original amount of \$2,000,000 deposited by Pledgors in deposit accounts maintained with Lender and pledged by Pledgors to Lender pursuant to the Pledge Agreements and subject to Control Agreements in favor of Lender.

“Payment in Full” or “Paid in Full” means, when used in connection with the Obligations, the full and final payment in cash of all of the Obligations (other than unasserted contingent indemnification obligations), and the expiration, termination, cancellation or cash collateralization of all Bank Product Obligations (including Hedge Obligations) or other similar obligations, and the termination of all commitments and obligations of Lender to make loans or extend other financial accommodations to Borrower under the Credit Agreement or the other Loan Documents.

“Patents” means patents and patent applications, including (i) the patents and patent applications listed on Schedule 5.25(b) to the Information Certificate, (ii) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Loan Party’s rights corresponding thereto throughout the world.

“Patent Security Agreement” means each Patent Security Agreement executed and delivered by the applicable Loan Party in favor of Lender, in form and substance reasonably acceptable to Lender.

“Patriot Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the IRC and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the IRC and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the IRC and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by any Loan Party and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the IRC.

“Permitted Discretion” means a determination made in good faith and in the exercise of the commercially reasonable business judgment of Lender in accordance with customary business practices for comparable asset-based transactions.

“Permitted Dispositions” means:

- (a) sales of Inventory to buyers in the ordinary course of business;
- (b) the granting of Permitted Liens;

- (c) the making of a Permitted Investment; and
- (d) any other disposition (not otherwise specifically permitted in this definition of Permitted Dispositions) which is agreed to in writing by Lender in its sole discretion.

“Permitted Indebtedness” means:

- (a) Indebtedness evidenced by this Agreement or the other Loan Documents or any other Indebtedness of a Loan Party or any Subsidiary of a Loan Party to Lender or any of Lender’s Affiliates;
- (b) Indebtedness set forth on Schedule 5.19 to the Information Certificate;
- (c) Permitted Purchase Money Indebtedness and any Refinancing Indebtedness in respect of such Indebtedness;
- (d) endorsement of instruments or other payment items for deposit;
- (e) Indebtedness under Capital Leases of Borrower or any of its Subsidiaries;
- (f) unsecured Indebtedness (not otherwise specifically permitted in this definition of Permitted Indebtedness) in an aggregate principal amount not to exceed at any time \$50,000; and
- (g) other Indebtedness (not otherwise specifically permitted in this definition of Permitted Indebtedness) which is agreed to in writing by Lender in its sole discretion.

“Permitted Investments” means:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (c) advances made in connection with purchases of Goods or services in the ordinary course of business from Persons which are not Affiliates of Borrower and reasonable advances made for costs and expenses in the ordinary course of business;
- (d) Investments owned by Borrower or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1;
- (e) Investments resulting from entering into Bank Product Agreements;
- (f) investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business; and
- (g) Investments constituting deposits made in connection with the purchase of goods or services or to secure the performance of statutory obligations constituting Permitted Liens, in each case in the ordinary course of business in an aggregate amount for such deposits not to exceed \$100,000 at any one time.

“Permitted Liens” means

- (a) Liens granted to, or for the benefit of, Lender and/or the Bank Product Providers to secure the Obligations;
- (b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Lender’s Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests;
- (c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 9.3 of the Agreement;

(d) Liens set forth on Schedule P-2; provided, however, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 shall only secure the Indebtedness that it secures on the Closing Date;

(e) the interests of lessors under operating leases and non-exclusive licensors under license agreements;

(f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired, the proceeds thereof and the contracts pursuant to which such asset was acquired, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof;

(g) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests;

(h) Liens on amounts deposited to secure the obligations of a Loan Party or any Subsidiary of a Loan Party in connection with worker's compensation or other unemployment insurance;

(i) Liens on amounts deposited to secure the obligations of a Loan Party or any Subsidiary of a Loan Party in connection with the making or entering into of bids, tenders or leases in the ordinary course of business and not in connection with the borrowing of money;

(j) Liens on amounts deposited to secure the reimbursement obligations of a Loan Party or any Subsidiary of a Loan Party with respect to surety or appeal bonds obtained in the ordinary course of business;

(k) with respect to any real property owned or leased by a Loan Party or any Subsidiary of any Loan Party, survey exceptions or encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of such real properties, which do not materially interfere with the business of such Loan Party or such Subsidiary

(l) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions permitted under this Agreement solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(m) Liens in favor of customs authorities arising as a matter of law to secure customs duties in connection with the importation of goods; and

(n) Liens (not otherwise specifically permitted in this definition of Permitted Liens) which are agreed to in writing by Lender in its sole discretion.

"Permitted Overadvance Amount" means \$14,000,000.

"Permitted Protest" means the right of Borrower or any other Loan Party or any of their respective Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on the books and records of Borrower, such other Loan Party or such Subsidiary in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower, such other Loan Party or such Subsidiary, as applicable, in good faith, and (c) Lender is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Lender's Liens.

"Permitted Purchase Money Indebtedness" means Purchase Money Indebtedness incurred after the Closing Date in an aggregate principal amount outstanding not to exceed \$[100],000 during any Fiscal Year of Borrower.

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

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

"Petition Lender" means HC Capital Holdings 0909A, LLC, in its capacity as "Lender" under the Prepetition Credit Facility.

"Plan" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of any Loan Party or any ERISA Affiliate or any such Plan to which any Loan Party or any ERISA Affiliate is required to contribute on behalf of any of its employees.

"Pledge Agreements" means, collectively, the Pledge Agreements executed and delivered by the Pledgors in favor of Lender, and each is a "Pledge Agreement".

"Pledgors" means, collectively, Argosy Investment Partners III, L.P., Marquette Capital Fund I, LP, Horizon Capital Partners III, L.P. and Horizon Partners, Ltd., and each is a "Pledgor".

"Preferred Stock" means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

"Prepetition Advances" means "Advances" under and as defined in the Prepetition Credit Facility as in effect immediately prior to the Petition Date.

"Prepetition Credit Facility" means the Credit and Security Agreement dated as of January 30, 2012, between Borrower and Lender (as successor to Wells Fargo), as amended by the (i) First Amendment to Credit and Security Agreement and Waiver of Default, dated as of October 2, 2012, (ii) Second Amendment to Credit and Security Agreement and Waiver of Defaults, dated as of March 12, 2013, (iii) Third Amendment to Credit and Security Agreement, dated as of April 25, 2013, (iv) Forbearance Agreement and Fourth Amendment to Credit and Security Agreement, dated as of August 15, 2013, (v) Forbearance Agreement and Fifth Amendment to Credit and Security Agreement, dated as of September 9, 2013 and (vi) Waiver Agreement and Sixth Amendment to Credit and Security Agreement, dated as of September 26, 2013, and as amended, amended and restated, supplemented or otherwise modified from time to time prior to the Petition Date. "Prepetition Lender" means the "Lender" under the Prepetition Credit Facility.

"Prepetition Loan Documents" means the "Loan Documents" as defined in the Prepetition Credit Facility.

"Prepetition Obligations" means "Obligations" under and as defined in the Prepetition Credit Facility.

"Prepetition Payment" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Indebtedness or trade payables (including, without limitation, in respect of reclamation claims) or other claims against the Loan Parties, in each case arising prior to the Petition Date.

"Prepetition Subordinated Debt" means Indebtedness or other obligations owed by Borrower or any other Loan Party which have been subordinated to the Obligations pursuant to a Subordination Agreement, in each case prior to the Petition Date.

"Prepetition Term Loans" means "Term Loans" and "CapEx Purchase Loans" under and as defined in the Prepetition Credit Facility as in effect immediately prior to the Petition Date.

"Prime Rate" means at any time the rate of interest most recently announced by Lender at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Lender's base rates, and serves as the basis upon which effective rates of interest are calculated for those loans making reference to it, and is evidenced by its recording in such internal publication or publications as Lender may designate. Each change in the rate of interest shall become effective on the date each Prime Rate change is announced by Lender.

"Priority of Claims Waiver" has the meaning specified therefor in Section 6.19.

"Proceeds" has the meaning specified therefor in Schedule 1.1, definition of "Collateral".

"Prohibited Preferred Stock" means any Preferred Stock that by its terms is mandatorily redeemable or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than 1 year after the Maturity Date, or, on or before the date that is less than 1 year after the Maturity Date, is redeemable at the option

of the holder thereof for cash or assets or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

“Projections” means Borrower’s forecasted (a) balance sheets, (b) profit and loss statements, (c) Availability projections, and (d) cash flow statements, all prepared on a basis reasonably consistent with Borrower’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

“Protective Advance” has the meaning specified therefor in Section 2.3(d).

“PTO” means the United States Patent and Trademark Office.

“Purchase Money Indebtedness” means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 60 days after, the acquisition, construction or improvement of any fixed assets for the purpose of financing all or any part of the cost of acquisition, construction or improvement thereof.

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

“Refinancing Indebtedness” means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of Lender,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender as those that were applicable to the refinanced, renewed, or extended Indebtedness, and

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

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

“Reorganization Plan” means a plan or plans of reorganization in the Case.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Reserves” means, as of any date of determination, the sum of (a) an amount or percent of a specified item or category of items that Lender establishes from time to time in its sole discretion to reduce Availability to reflect (i) such matters, events, conditions, contingencies or risks which affect or which may reasonably be expected to affect the assets, business or prospects of Borrower, any other Loan Party or the Collateral or its value or the enforceability, perfection or priority of Lender’s security interest in the Collateral, or (ii) Lender’s judgment that any collateral report or financial information relating to Borrower or any other Loan Party delivered to Lender is incomplete, inaccurate or misleading in any material respect, *plus* (b) the Dilution Reserve, the Farm Products Reserve, the Leasehold Obligations Reserve, the Bank Product Reserve Amount and the Carve Out Reserve.

“Restricted Junior Payment” means (a) declaration or payment of any dividend or the making of any other payment or distribution on account of Stock issued by Borrower to the direct or indirect holders of such Stock, (b) any purchase, redemption, or other acquisition or retirement for value of any Stock issued by Borrower, (c) any payment in respect of any Subordinated Debt owed by Borrower to any Subordinated Creditor and/or any Subordinated Creditors, or (d) any payment of management, consulting, monitoring, sale representation, advisory or other service fees (and related costs and expenses) to Horizon Partners, Ltd. or to any other Affiliate of Horizon Partners, Ltd. or any other Affiliate of Borrower.

“Restricted Parties” means, collectively, (a) Little Bee Impex, (b) China Industrial and (c) E.J. Goodrich.

“Revolver Usage” means, as of any date of determination, the sum of the amount of outstanding Advances.

“Revolving Credit Facility” means the \$27,000,000 revolving line of credit facility described in Section 2.1 pursuant to which Lender provides Advances to Borrower.

“RSA” means, collectively, those certain Restructuring Support Agreements to be entered into in connection with a contemplated Insolvency Proceeding of Borrower, by and among Borrower and certain holders of claims against Borrower.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“S&P” has the meaning specified therefor in the definition of Cash Equivalents.

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

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

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“Security Interest” has the meaning specified therefor in Section 3.1 of this Agreement.

“Solvent” means, with respect to any Person on a particular date, that, (i) at fair valuations, the sum of such Person’s assets (and including as assets for this purpose all rights of subrogation, contribution or indemnification arising pursuant to any guarantees given by such Person) is greater than all of such Person’s debts and including subordinated and contingent liabilities computed at the amount which, such Person has a reasonable basis to believe, represents an amount which can reasonably be expected to become an actual or matured liability (and including as to contingent liabilities arising pursuant to any guarantee the face amount of such liability as reduced to reflect the probability of it becoming a matured liability); and (ii) such Person is able to pay its debts as they mature and has (and has a reasonable basis to believe it will continue to have) sufficient capital (and not unreasonably small capital) to carry on its business consistent with its practices as of the date hereof.

“Stock” means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“Subordinated Creditors” means, collectively, Argosy Investment Partners III, L.P., Marquette Capital Fund I, L.P., Horizon Capital Partners III, L.P., Ernest L. Groeb, Troy Groeb, E. Jeanne Groeb, E. Jeanne Groeb, as Trustee of the E. Jeanne Groeb Trust dated April 24, 2001, as amended, Horizon Partners, Ltd. and any other Person now or in the future subordinating Indebtedness or other obligations of any Loan Party held by that Person to the payment of the Obligations, and each is a “Subordinated Creditor”.

“Subordinated Debt” means Indebtedness or other obligations owed by Borrower or any other Loan Party which have been subordinated to the Obligations pursuant to a Subordination Agreement.

“Subordinated Securities Purchase Agreements” means, collectively, that certain Securities Purchase Agreement dated as of March 16, 2007 and that certain Securities Purchase Agreement dated as of March 31, 2010, by and among Borrower and the Institutional Subordinated Creditors.

“Subordination Agreement” means each subordination agreement now or hereafter executed by one or more of the Subordinated Creditors in favor of Lender in form and content acceptable to Lender in its sole discretion, including, without limitation, the Institutional Subordinated Creditors Subordination Agreement, the Groeb Family Subordinated Creditors Subordination Agreement and the Management Fee Subordination Agreement.

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

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

“Supporting Obligations” means supporting obligations (as such term is defined in the Code), and includes letters of credit and guaranties issued in support of Accounts, Chattel Paper, documents, General Intangibles, instruments or Investment Related Property.

“Taxes” means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto; provided, however, that Taxes shall exclude (i) any tax imposed on the net income or net profits of Lender (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof in which Lender is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which Lender’s principal office is located in each case as a result of a present or former connection between Lender and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from Lender having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document), and (ii) any U.S. withholding taxes imposed under FATCA.

“Termination Date” has the meaning specified therefor in Section 2.9 of this Agreement

“Trademark Security Agreement” means each Trademark Security Agreement executed and delivered by the applicable Loan Party in favor of Lender, in form and substance reasonably acceptable to Lender.

“Trademarks” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including (i) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule 5.25(b) to the Information Certificate, (ii) all renewals thereof, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iv) the right to sue for past, present and future infringements and dilutions thereof, (v) the goodwill of each Loan Party’s business symbolized by the foregoing or connected therewith, and (vi) all of each Loan Party’s rights corresponding thereto throughout the world.

“Transfer Eligible Inventory” means Eligible Inventory that is in transit on trucks or trailers owned or leased by Borrower with a destination being a location identified on Schedule 5.29 to the Information Certificate which is owned by Borrower or leased by Borrower and subject to a Collateral Access Agreement.

“Uniform Customs” means the Uniform Customs and Practice for Documentary Credits (2007 Revision), effective July, 2007 International Chamber of Commerce Publication No. 600.

“United States” means the United States of America.

“Updated Budget” has the meaning specified therefor in Section 6.21(b).

“Priority of Claims Waiver” has the meaning specified therefor in Section 6.19.

“USAO NDIL” means the Department of Justice, United States Attorney’s Office for the Northern District of Illinois.

“URL” means “uniform resource locator,” an internet web address.

“Value” means, as determined by Lender in good faith, with respect to Inventory, the lower of (a) cost computed on a first-in first-out basis in accordance with GAAP or (b) market value, provided that for purposes of the calculation of the Borrowing Base, (i) the Value of the Inventory shall not include: (A) the portion of the value of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower or (B) write-ups or write-downs in value with respect to currency exchange rates and (ii) notwithstanding anything to the contrary contained herein, the cost of the Inventory shall be computed in the same manner and consistent with the most recent appraisal of the Inventory received and accepted by Lender, if any.

“Voidable Transfer” has the meaning specified therefor in Section 17.7 of this Agreement.

“Wells Fargo” means Wells Fargo Bank, National Association.

“Weekly Actuals Report” has the meaning specified therefor in Section 6.21(a).

b. **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, however, that if Borrower notifies Lender that Borrower requests an amendment to any provision hereof to eliminate the effect of any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions) (an “Accounting Change”) occurring after the Closing Date, or in the application thereof (or if Lender notifies Borrower that Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Lender and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lender and Borrower after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. Whenever used herein, the term “financial statements” shall include the footnotes and schedules thereto. Whenever the term “Borrower” is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise.

c. **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein. The meaning of any term defined herein by reference to the Code will not be limited by reason of any limitation set forth on the scope of the Code, whether under Section 9-109 of the Code, by reason of federal preemption or otherwise.

d. **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in cash or immediately available funds (or in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization) of all of the Obligations (including the payment of any Lender Expenses that have accrued irrespective of whether demand has been made therefor and the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements) other than unasserted contingent indemnification obligations. Any reference herein to any Person shall be construed to include such Person’s successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

e. **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

Schedule 2.12

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

Borrower shall pay to Lender each of the following fees:

Monthly:

- (a) **Unused Line Fee.** An unused line fee of one-quarter of one percent (0.25%) per annum of the daily average of the Maximum Revolver Amount reduced by outstanding Advances (the "Unused Amount"), from the date of this Agreement to and including the Termination Date, which unused line fee shall be payable monthly in arrears on the first day of each month and on the Termination Date.
- (b) **Cash Management Fees.** Service fees to Lender for Cash Management Services provided pursuant to the Cash Management Documents, Bank Product Agreements or any other agreement entered into by the parties, in the amount prescribed in Lender's current service fee schedule.

Upon demand by Lender or as otherwise specified in this Agreement:

- (a) **Collateral Exam Fees, Costs and Expenses.** Lender's costs and expenses in connection with any collateral exams, audits or inspections conducted by or on behalf of Lender at the current rates established from time to time by Lender as its fee for collateral exams, audits or inspections (which fees are currently \$125 per hour per collateral examiner), together with all actual out-of-pocket costs and expenses incurred in conducting any collateral exam, audit, or inspection. Lender may conduct collateral exams, audits and inspections from time to time in its sole discretion.
- (b) **Appraisal Fees, Costs and Expenses.** Lender's costs and expenses, including any appraisal fees and costs and expenses incurred by an appraiser, in connection with any appraisal of all or any part of the Collateral conducted at the request of the Lender; provided, however, that commencing on the first anniversary of the Closing Date and during each year thereafter, so long as no Default or Event of Default shall have occurred, Borrower shall have no obligation to reimburse Lender for fees, costs and expenses related to more than one (1) such appraisal of all or any part of the Collateral conducted during each such Fiscal Year. Notwithstanding the foregoing limitation, Borrower shall have the obligation to reimburse Lender for fees, costs and expenses related to any appraisal of all or any part of the Collateral conducted as a result of Borrower failing to maintain the Covenant Threshold.

Schedule 6.1

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

Deliver to Lender each of the financial statements, reports, or other items set forth below at the following times, in form satisfactory to Lender:

as soon as available, but in any event within 25 days after the end of each Fiscal Month:	(a) an unaudited consolidated and consolidating balance sheet, income statement, statement of cash flow, and statement of owner's equity covering the operations of Borrower and its Subsidiaries during such period and compared to the prior period, together with a corresponding discussion and analysis of results from management; and (b) a Compliance Certificate.
as soon as available, but in any event within 120 days after the end of each Fiscal Year:	(a) consolidated and consolidating financial statements of Borrower for each such Fiscal Year, audited by independent certified public accountants reasonably acceptable to Lender and certified, without any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item), by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, statement of cash flow, and statement of owner's equity and, if prepared, such accountants' letter to management), together with a corresponding discussion and analysis of results from management; (b) a Compliance Certificate; and
as soon as available, but in any event within 30 days before the start of each Fiscal Year:	(a) copies of Borrower's Projections, in form and substance (including as to scope and underlying assumptions) satisfactory to Lender, in its sole discretion, for such Fiscal Year, on a monthly basis, certified by the chief financial officer of Borrower as being such officer's good faith estimate of the financial performance of Borrower during the period covered thereby.

Schedule 6.2

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

Provide Lender with each of the documents set forth below at the following times in form and substance satisfactory to Lender:

Daily:	(a) a Daily Collateral Report in form and detail acceptable to Lender; (b) an Account roll-forward with supporting details supplied from sales journals, collection journals, credit registers and any other records; (c) notice of all claims, offsets, or disputes asserted by Account Debtors with respect to Accounts of Borrower and its Subsidiaries; (d) copies of invoices together with corresponding shipping and delivery documents and credit memos together with corresponding supporting documentation with respect to invoices and credit memos in excess of an amount determined in the sole discretion of Lender from time to time; and (e) a Borrowing Base Certificate.
Weekly on the second Business Day of each week or more frequently if Lender requests:	(a) the total dollar value of all mesquite honey Inventory of Borrower; (b) a conference call with financial advisors and Borrower detailing Borrower's efforts and progress with respect to the debtor in possession financing budget, chapter 11 bankruptcy preparations, restructuring and other management plans and strategies, including, without limitation, a summary description of margin improvements (if any), vendor and customer terms and expense reductions (if any); and (c) Inventory system/perpetual reports specifying the cost of Borrower's Inventory, by location and by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting).
Monthly (no later than the 10th day of each month or more frequently if Lender requests:	(a) a detailed aging of Borrower's Accounts, together with a reconciliation to the monthly Account roll-forward and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting); (b) a detailed calculation of those Accounts that are not eligible for the Borrowing Base; and (c) a summary aging, by vendor, of Borrower's accounts payable (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting).
Monthly (no later than the 20th day of each month) or more frequently if Lender requests:	(a) a reconciliation of Accounts aging, trade accounts payable aging, and Inventory perpetual of Borrower to the general ledger and the monthly financial statements, including any book reserves related to each category; (b) Inventory system/perpetual reports specifying the cost of Borrower's Inventory, by location and by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting); and (c) a detailed calculation of Inventory categories that are not eligible for the Borrowing Base.
Annually, or more frequently, if Lender requests:	(a) a detailed list of Borrower's and its Subsidiaries' customers, with address and contact information; and (b) mark to market Inventory adjustments.
Upon request by Lender:	(a) copies of purchase orders and invoices for Inventory and Equipment acquired by Borrower

	<p>or its Subsidiaries,</p> <p>(b) such other reports and information as to the Collateral and as to Borrower, each other Loan Party and each Subsidiary of each Loan Party and each Guarantor, as Lender may reasonably request.</p>
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EXHIBIT A

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

FORM OF COMPLIANCE CERTIFICATE

[on Borrower's letterhead]

To: HC Capital Holdings 0909A, LLC
c/o Peak Rock Capital
13413 Galleria Circle, Suite Q-300
Austin, TX 78738
Attn: Robert M. Strauss

Re: Compliance Certificate dated [_____]

Ladies and Gentlemen:

Reference is made to that certain Senior Secured Superpriority Priming Debtor-In-Possession Credit and Security Agreement (as amended, the "Credit Agreement") dated as of October 3, 2013, by and between HC Capital Holdings 0909A, LLC ("Lender"), Groeb Farms, Inc. ("Borrower"). Capitalized terms used in this Compliance Certificate have the meanings set forth in the Credit Agreement unless specifically defined herein.

Pursuant to Schedule 6.1 of the Credit Agreement, the undersigned officer of Borrower hereby certifies that:

1. Attached is the required financial information of Borrower and its Subsidiaries which are required to be furnished to Lender pursuant to Section 6.1 of the Credit Agreement for the period ended _____, ____ (the "Reporting Date"). Such financial information has been prepared in accordance with GAAP [(except for year-end adjustments and the lack of footnotes)]*, and fairly presents in all material respects the financial condition of Borrower and its Subsidiaries.
2. Such officer has reviewed the terms of the Credit Agreement and has made, or caused to be made under his/her supervision, a review in reasonable detail of the transactions and condition of Borrower and its Subsidiaries during the accounting period covered by the financial statements delivered pursuant to Schedule 6.1 of the Credit Agreement.
3. Such review has not disclosed the existence on and as of the date hereof, and the undersigned does not have knowledge of the existence as of the date hereof, of any event or condition that constitutes a Default or Event of Default, other than those which customarily occur as a result of events and circumstances leading up to and following the commencement the Case.
4. The representations and warranties of Borrower, each other Loan Party and each Subsidiary of each Loan Party and each Guarantor set forth in the Credit Agreement and the other Loan Documents are true and correct in all material respects on and as of the date hereof (except to the extent they relate to a specified date).

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this ____ day of _____, ____.

GROEB FARMS, INC.

By: _____

Name: _____

Title: _____

* Include bracketed language with monthly unaudited financial statements. Exclude bracketed language with annual audit reports

EXHIBIT B

**TO SENIOR SECURED SUPERPRIORITY PRIMING DEBTOR-IN-POSSESSION
CREDIT AND SECURITY AGREEMENT**

CONDITIONS PRECEDENT

THE OBLIGATION OF LENDER TO MAKE ITS INITIAL EXTENSION OF CREDIT PROVIDED FOR IN THIS AGREEMENT IS SUBJECT TO THE FULFILLMENT, TO THE SATISFACTION OF LENDER, OF EACH OF THE FOLLOWING CONDITIONS PRECEDENT:

- (a) the Closing Date shall occur on or before October 4, 2013;
- (b) Lender shall have received a certificate from the Secretary of Borrower (i) attesting to the resolutions of the Board of Directors of Borrower, as applicable, authorizing its execution, delivery, and performance of the Loan Documents to which it is a party, (ii) authorizing specific officers to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers;
- (c) Lender shall have received copies of the articles of incorporation and bylaws of Borrower, as amended, modified, or supplemented to the Closing Date, certified as true, correct and complete by the Secretary of Borrower;
- (d) [RESERVED]
- (e) Each Loan Party and each of its Subsidiaries shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by such Loan Party or its Subsidiaries of the Loan Documents or with the consummation of the transactions contemplated thereby;
- (f) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Lender;
- (g) Lender shall have received such other items as Lender shall have reasonably requested;
- (h) Lender shall have received a completed Borrowing Base Certificate;
- (i) Lender shall have received, not later than three (3) days following the Petition Date, a certified copy of the Interim Order by the Bankruptcy Court, which Interim Order shall, among other things, (i) authorize Borrower to enter into this Agreement and the other Loan Documents, in the amount and on the terms set forth in this Agreement and the other Loan Documents, (ii) approve the Loan Documents and grant the Lien and Superpriority Claim contemplated thereby, approve the prepayment of the obligations under the Prepetition Credit Facility (to the extent required herein) by Borrower and all of the fees provided for in this Agreement and (iv) not have been vacated, reversed, modified, amended or stayed;
- (j) All of the "first day orders" entered at the time of commencement of the Case, each of which shall be reasonably satisfactory in form and substance to Lender;
- (k) Lender shall have received all fees required to be paid, and all Lender Expenses for which invoices have been presented (including the reasonable documentary fees and expenses of legal counsel), on or before the Closing Date. The Prepetition Lender shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable documented fees and expenses of legal counsel), on or before the Closing Date; and
- (l) No litigation shall have commenced which has not been stayed by the automatic stay or by the Bankruptcy Court which, if successful, would result in a Material Adverse Change other than the Case.

EXHIBIT C

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

CONDITIONS SUBSEQUENT

None.

EXHIBIT D

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

REPRESENTATIONS AND WARRANTIES

For the avoidance of doubt, the representations and warranties set forth on Exhibit D are subject, in each case, to the effect of the RSA and the Orders.

5.1 Due Organization and Qualification; Subsidiaries.

(a) Each Loan Party and each Guarantor (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any state where the failure to be so qualified could reasonably be expected to result in a Material Adverse Change and (iii) except as would not reasonably be expected to result in a Material Adverse Change, has all requisite power and authority to own and operate its properties and to carry on its business as now conducted.

(b) Set forth on Schedule 5.1(b) to the Information Certificate is a complete and accurate description of the authorized capital Stock of each Loan Party, each Subsidiary of each Loan Party and each Guarantor, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding. Other than as described on Schedule 5.1(b) to the Information Certificate, as of the Closing Date, there are no subscriptions, options, warrants, or calls relating to any shares of any capital Stock of any Loan Party, any Subsidiary of any Loan Party or any Guarantor, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party or any Subsidiary of any Loan Party or any Guarantor is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any of its capital Stock.

(c) Set forth on Schedule 5.1(c) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the direct and indirect Subsidiaries of the Loan Parties and of the Guarantors, showing: (i) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by each Loan Party and each Guarantor. All of the outstanding capital Stock of each such Subsidiary of any Loan Party and each Subsidiary of each Guarantor has been validly issued and is fully paid and non-assessable.

5.2 Due Authorization; No Conflict. (a) Subject to the entry of the Orders, as to each Loan Party and each Guarantor, the execution, delivery and performance by such Loan Party or such Guarantor, as applicable, of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party or such Guarantor, as applicable, (b) as to each Loan Party and each Guarantor, the execution, delivery, and performance by such Loan Party or such Guarantor, as applicable, of the Loan Documents to which it is a party do not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries or to any Guarantor or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries or of any Guarantor or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries or on any Guarantor or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract or any Material License of any Loan Party or any of its Subsidiaries except to the extent any such conflict, breach or default could not individually or in the aggregate reasonably be expected to cause a Material Adverse Change, in each case the effect of which has not been stayed by the automatic stay or the Bankruptcy Court or (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens.

5.3 Governmental Consents. Subject to the entry of the Orders, no consent, approval, authorization or other order or other action by, and no notice with, any Governmental Authority is required to be obtained or made by any Loan Party or any Guarantor for the grant of any security interest by such Loan Party or such Guarantor in and to any of the collateral security for the Obligations, including, without limitation, the Collateral, pursuant to this Agreement or any other Loan Document or for the execution, delivery, or performance of this Agreement or any other Loan Document by such Loan Party or such Guarantor, in each case except for any filings or notices contemplated by the Loan Documents and such consents, approvals, authorizations, orders, actions, notices or filings as have been obtained or made.

5.4 Binding Obligations. Each Loan Document has been duly executed and delivered by each Loan Party and Guarantor that is a party thereto and, subject to Bankruptcy Court approval, is the legally valid and binding obligation of such Loan Party or such Guarantor, as applicable, and subject to Bankruptcy Court approval, enforceable against such Loan Party or such Guarantor, as applicable, in accordance with its respective terms, except as enforcement may be limited by equitable

principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

5.5 **Title to Assets; No Encumbrances.** Each Loan Party and each Subsidiary of each Loan Party and each Guarantor has (a) good, sufficient and legal title to (in the case of fee interests in real property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of its respective assets reflected in its most recent financial statements delivered pursuant to Section 6.1 and most recent collateral reports delivered pursuant to Section 6.2, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

5.6 **Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.**

(a) The exact legal name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of each Loan Party and each of its Subsidiaries and of each Guarantor is set forth on Schedule 5.6(a) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(b) The chief executive office of each Loan Party and each of its Subsidiaries and of each Guarantor is located at the address indicated on Schedule 5.6(b) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(c) The tax identification numbers and organizational identification numbers, if any, of each Loan Party and each Subsidiary of each Loan Party and of each Guarantor are identified on Schedule 5.6(c) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(d) As of the Closing Date, no Loan Party and no Subsidiary of a Loan Party holds any Commercial Tort Claims, except as set forth on Schedule 5.6(d) to the Information Certificate.

5.7 **Litigation.**

(a) Except for the Case, as set forth on Schedule 5.7(b) to the Information Certificate and as otherwise disclosed in Borrower's Annual Report for the Fiscal Year ended December 31, 2012, there are no unstayed actions, suits, or proceedings pending or, to the knowledge of any Loan Party, after due inquiry, threatened in writing against a Loan Party or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change.

(b) Schedule 5.7(b) to the Information Certificate sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings other than the Case that, as of the Closing Date, is pending or, to the knowledge of any Loan Party, after due inquiry, threatened in writing against any Loan Party or any Subsidiary of any Loan Party that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change, of (i) the parties to such actions, suits, or proceedings as of the Closing Date, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings as of the Closing Date, (iii) the status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether, as of the Closing Date, any liability of any Loan Party or any Subsidiary of any Loan Party in connection with such actions, suits, or proceedings is covered by insurance.

5.8 **Compliance with Laws.** No Loan Party nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change or (b) subject to the entry of the Orders, is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

5.9 **No Material Adverse Change.** All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by Borrower to Lender have been prepared in accordance with GAAP (except as otherwise noted therein and, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the consolidated financial condition of the Loan Parties and their Subsidiaries as of the date thereof and results of operations for the period then ended. Since the date of the most recent financial statement delivered to Lender, no event, circumstance, or change has occurred that has resulted in, or could reasonably be expected to result in, a Material Adverse Change with respect to the Loan Parties and their Subsidiaries, other than those which customarily occur as a result of events and circumstances leading up to and following the commencement the Case.

5.10 **Fraudulent Transfer.** No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

5.11 **ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the IRC and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the IRC and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the IRC, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in a Material Adverse Change. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Change.

(c) No ERISA Event has occurred, and neither the Loan Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan, in each case that could reasonably be expected to result in liability to any Loan Party or any ERISA Affiliate individually or in the aggregate in excess of \$250,000; (ii) the Loan Parties and each ERISA Affiliate has met in all material respects all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan as of which a valuation is available at the time of determination, the funding target attainment percentage (as defined in Section 430(d)(2) of the IRC) is 60% or higher and neither the Loan Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of such most recent valuation date; (iv) neither the Loan Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Loan Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

(d) No Loan Party or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (A) on the Closing Date, those listed on Schedule 5.11(d) hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.

5.12 **Environmental Condition.** Except as set forth on Schedule 5.12 to the Information Certificate, (a) to each Loan Party's knowledge, no properties or assets of any Loan Party or any Subsidiary of any Loan Party has ever been used by any Loan Party, any Subsidiary of any Loan Party, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, in a manner that could reasonably be expected to result in a Material Adverse Change, (b) to each Loan Party's knowledge, after due inquiry, no properties or assets of any Loan Party or any Subsidiary of any Loan Party have ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any real property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

5.13 **Intellectual Property.** Each Loan Party and each of its Subsidiaries own, or hold licenses or other similar contractual interests in, all material trademarks, trade names, copyrights, patents, and licenses that are necessary to the conduct of its business as currently conducted.

5.14 **[Reserved]**

5.15 **Deposit Accounts and Securities Accounts.** Set forth on Schedule 5.15 to the Information Certificate (as updated pursuant to Section 6.12(j)(iv)) is a listing of all of the Deposit Accounts and Securities Accounts of each Loan Party and

each of its Subsidiaries, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

5.16 **Complete Disclosure.** All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of a Loan Party or any of its Subsidiaries) furnished by or on behalf of a Loan Party or any of its Subsidiaries in writing to Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the industry of a Loan Party or any of its Subsidiaries) hereafter furnished by or on behalf of a Loan Party or any of its Subsidiaries in writing to Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections most recently delivered to Lender represent, and as of the date on which any other Projections are delivered to Lender, such additional Projections represent, Borrower's good faith estimate, on the date such Projections are delivered, of the future performance of the Loan Parties and their respective Subsidiaries for the periods covered thereby based upon assumptions believed by Borrower to be reasonable at the time of the delivery thereof to Lender.

5.17 **Material Contracts.** Set forth on Schedule 5.17 to the Information Certificate (as such Schedule may be updated from time to time in accordance herewith) is a reasonably detailed description of the Material Contracts of each Loan Party and each Subsidiary of each Loan Party as of the most recent date on which Borrower provided Compliance Certificate pursuant to Section 6.1; provided, however, that Borrower may amend Schedule 5.17 to the Information Certificate to add an additional Material Contract or to remove a Material Contract which has expired at the end of its normal term or which has been terminated, so long as such amendment occurs by written notice to Lender on the date that Borrower provides its Compliance Certificate.

5.18 **Patriot Act.** To the extent applicable, each Loan Party and each of its Subsidiaries and each Guarantor is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of its Subsidiaries or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.19 **Indebtedness.** Set forth on Schedule 5.19 to the Information Certificate is a true and complete list of all Indebtedness (other than Capital Leases) of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

5.20 **Payment of Taxes.** Except as otherwise permitted under Section 6.5, all tax returns and reports of each Loan Party and each of its Subsidiaries required to be filed by any of them have been timely filed, and all taxes and assessments shown on such tax returns to be due and payable by any Loan Party or any of its Subsidiaries have been paid when due and payable. Except as otherwise permitted under Section 6.5 all assessments, fees and other governmental charges upon a Loan Party or any of its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable except when the failure to pay any such assessment, fee or charge could not reasonably be expected to result in a Material Adverse Change. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all taxes not yet due and payable. No Loan Party knows of any proposed tax assessment against such Loan Party, any other Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate action; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

5.21 **Margin Stock.** No Loan Party nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any other purpose, in each case in a manner that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

5.22 **Governmental Regulation.** No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940. No Loan Party nor any of its Subsidiaries is a "registered

investment company” or a company “controlled” by a “registered investment company” or a “principal underwriter” of a “registered investment company” as such terms are defined in the Investment Company Act of 1940.

5.23 **OFAC.** No Loan Party or any of its Subsidiaries or any Guarantor is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party or any of its Subsidiaries or any Guarantor (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

5.24 **Employee and Labor Matters.** There is (i) no unfair labor practice complaint pending or, to the knowledge of Borrower, threatened against any Loan Party or any of its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or any of its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a Material Adverse Change, or (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Loan Party or any of its Subsidiaries that could reasonably be expected to result in a Material Adverse Change. No Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of each Loan Party and each of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. All material payments due from any Loan Party or any of its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. Schedule 5.24 to the Information Certificate provides a complete and correct list of all collective bargaining or similar agreements of each Loan Party and each Subsidiary of each Loan Party with unions, labor organizations or other bargaining agents.

5.25 **Collateral.**

(a) **[Reserved]**

(b) **Intellectual Property.** As of the Closing Date, Schedule 5.25(b) to the Information Certificate provides a complete and correct list of: (i) all registered Copyrights owned by any Loan Party, all applications for registration of Copyrights owned by any Loan Party, and all other Copyrights owned by any Loan Party and material to the conduct of the business of any Loan Party; (ii) all Intellectual Property Licenses entered into by any Loan Party pursuant to which (A) any Loan Party has provided any material license or other material rights in Intellectual Property owned or controlled by such Loan Party to any other Person or (B) any Person has granted to any Loan Party any material license or other material rights in Intellectual Property owned or controlled by such Person that is material to the business of such Loan Party, including any Intellectual Property that is incorporated in any Inventory, software, or other product marketed, sold, licensed, or distributed by such Loan Party; (iii) all Patents owned by any Loan Party and all applications for Patents owned by any Loan Party; and (iv) all registered Trademarks owned by any Loan Party, all applications for registration of Trademarks owned by any Loan Party, and all other Trademarks owned by any Loan Party and material to the conduct of the business of any Loan Party.

(i) To each Loan Party’s knowledge after reasonable inquiry, no Person has infringed or misappropriated or is currently infringing or misappropriating any Intellectual Property rights owned by such Loan Party, in each case, that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change;

(ii) To each Loan Party’s knowledge after reasonable inquiry, all registered Copyrights, registered Trademarks, and issued Patents that are owned by such Loan Party and necessary in the conduct of its business are valid, subsisting and enforceable and in compliance with all legal requirements, filings, and payments and other actions that are required to maintain such Intellectual Property in full force and effect; and

(iii) Each Loan Party has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all trade secrets owned by such Loan Party that are necessary in the business of such Loan Party;

(c) **Valid Security Interest.** Subject to Bankruptcy Court approval and the Orders, this Agreement creates a valid security interest in the Collateral of each Loan Party, to the extent a security interest therein can be created under the Code, securing the payment of the Obligations. Subject to Bankruptcy Court approval and the Orders, except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of financing statements listing each applicable Loan Party, as a debtor, and Lender, as secured party, in the jurisdictions

listed next to such Loan Party's name on Schedule 5.6(a) to the Information Certificate. Upon entry of the Interim Order (or the Final Order, when applicable) and the making of such filings, Lender shall have a first priority perfected security interest in the Collateral of each Loan Party to the extent such security interest can be perfected by the filing of a financing statement, subject to Permitted Liens. Upon entry of the Interim Order (or the Final Order, when applicable) and upon filing of the Copyright Security Agreement with the United States Copyright Office, filing of the Trademark Security Agreement with the PTO and the filing of the Patent Security Agreement with the PTO, and the filing of appropriate financing statements in the jurisdictions listed on Schedule 5.6(a) to the Information Certificate, all action necessary or desirable to perfect the Security Interest in and to on each Loan Party's Patents, Trademarks, or Copyrights has been taken.

5.26 **Eligible Accounts.** As to each Account that is identified by Borrower as an Eligible Account in a Borrowing Base Certificate or other report submitted to Lender, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the ordinary course of Borrower's business, (b) owed to Borrower, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Accounts.

5.27 **Eligible Inventory.** As to each item of Inventory that is identified by Borrower as Eligible Inventory in a Borrowing Base Certificate submitted to Lender, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of Eligible Inventory.

5.28 **Inventory Records.** Each Loan Party keeps correct and accurate records itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof.

5.29 **Locations of Inventory and Equipment.** Except as identified in Schedule 5.29 to the Information Certificate (as such Schedule may be updated pursuant to Section 6.14), the Inventory and Equipment (other than vehicles or Equipment out for repair) of the Loan Parties and their respective Subsidiaries are not stored with a bailee, warehouseman, or similar party other than as permitted in Section 7.16 and are located only at, or in-transit between or to, the locations identified on Schedule 5.29 to the Information Certificate (as such Schedule may be updated pursuant to Section 6.14).

5.31 **Licenses.** Set forth on Schedule 5.31 to the Information Certificate (as such Schedule may be updated from time to time in accordance herewith) is a reasonably detailed description of each Material License of each Loan Party and each Subsidiary of each Loan Party as of the most recent date on which Borrower provided its Compliance Certificate pursuant to Section 6.1; provided, however, that any Borrower may amend Schedule 5.31 to the Information Certificate to add an additional Material License or to remove a Material License which has expired at the end of its normal term or which has been terminated and the failure to maintain such Material License could not reasonably be expected to result in a Material Adverse Change, so long as such amendment occurs by written notice to the Lender on the date that such Borrower provides its Compliance Certificate.

5.32 **Agricultural Matters.** All of Borrower's assets constituting farm products or proceeds thereof are free and clear of Liens, including any Liens in favor of producers or sellers of farm products, except as specifically set forth on Schedule 5.32 to the Information Certificate.

5.33 **Eligible Equipment – Motor Vehicles.** Schedule 5.33 to the Information Certificate sets forth all each item of Eligible Equipment which is a motor vehicle or which has a certificate of title that is owned by Loan Parties as of the Closing Date, by model, model year and vehicle identification number.

5.34 **Deferred Prosecution Agreement.** The execution, delivery and performance by Borrower of the Deferred Prosecution Agreement has been duly authorized by all necessary action on the part of the Borrower. The information contained in the factual statement of the Deferred Prosecution Agreement is true and correct in all material respects. Borrower is not aware of any information which would make any factual statement contained in the Deferred Prosecution Agreement misleading or inaccurate in any material respect. Borrower is not in material breach of any of its covenants or obligations under the Deferred Prosecution Agreement.

5.35 **Reorganization Matters.**

(a) The Case was commenced on the Petition Date in accordance with Applicable Law and proper notice thereof and the proper notice for the hearing for the approval of the Interim Order has been given and proper notice for the hearing for the approval of the Final Order will be given.

(b) After the entry of the Interim Order, and pursuant to and to the extent permitted in the Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Case having the priority set forth in the Orders.

(c) After the entry of the Interim Order and pursuant to and to the extent provided in the Interim Order and the Final Order, the Obligations will be secured by a valid and perfected Lien having the priority described in the Orders.

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

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, upon the maturity (whether by acceleration or otherwise) of any of the Obligations, Lender shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court, as more fully set forth in and subject to the Orders.

(f) On the date of any Borrowing hereunder, the Interim Order (or the Final Order, when applicable) shall be in effect, not have been stayed or otherwise subject to appeal and not have been amended or modified. Upon the maturity (whether by the acceleration or otherwise) of any of the obligations of the Loan Parties hereunder and under the other Loan Documents, the Lender shall, subject to the provisions of Section 10 and the Orders, be entitled to immediate payment of such obligations, and to enforce the remedies provided for hereunder, without further application to or order by the Bankruptcy Court.

EXHIBIT E

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

INFORMATION CERTIFICATE
OF
BORROWER

Dated: October 3, 2013

HC Capital Holdings 0909A, LLC
c/o Peak Rock Capital
13413 Galleria Circle, Suite Q-300
Austin, TX 78738
Attn: Robert M. Strauss
Fax: (512) 765-6530
Email: Strauss@peakrockcapital.com

In connection with certain financing provided or to be provided by HC Capital Holdings 0909A, LLC ("Lender"), the undersigned Borrower represents and warrants to Lender the following information about each Loan Party and each Subsidiary of each Loan Party and each Guarantor (Capitalized definitional terms not specifically defined shall have the meaning set forth in the Senior Secured Superpriority Priming Debtor-in-Possession Credit and Security Agreement (the "Agreement")):

1. Attached as Schedule 5.1(b) is a complete and accurate description of (i) the authorized Stock of each Loan Party and each of its Subsidiaries and each Guarantor, by class, and the number of shares issued and outstanding and the names of the owners thereof (including stockholders, members and partners) and their holdings, all as of the date of this Agreement, (ii) all subscriptions, options, warrants or calls relating to any shares of Stock of such Loan Party, such Subsidiary and such Guarantor, including any right of conversion or exchange; (iii) each stockholders' agreement, restrictive agreement, voting agreement or similar agreement relating to any such Stock; and (iv) and organization chart for the Guarantors, the Borrower and their Subsidiaries.
2. Each Loan Party and each Guarantor is affiliated with, or has ownership in, the entities (including Subsidiaries) set forth on Schedule 5.1(c).
3. Each Loan Party and each Guarantor uses the following trade name(s) in the operation of their business (e.g. billing, advertising, etc.):

Borrower: Groeb Farms, Inc.; Miller's American Honey
4. Each Loan Party and each Guarantor is a registered organization of the following type:

Groeb Farms, Inc. is a Michigan corporation.
5. The exact legal name (within the meaning of Section 9-503 of the Code) of each Loan Party and each Guarantor as set forth in its respective certificate of incorporation, organization or formation, or other public organic document, as amended to date is set forth in Schedule 5.6(a).
6. Each Loan Party and each Guarantor is organized solely under the laws of the State set forth on Schedule 5.6(a). Each Loan Party and each Guarantor is in good standing under those laws and no Loan Party or Guarantor is organized in any other State.
7. The chief executive office and mailing address of each Loan Party and each Guarantor is located at the address set forth on Schedule 5.6(b) hereto.
8. The books and records of each Loan Party and each Guarantor pertaining to Accounts, contract rights, Inventory, and other assets are located at the addresses specified on Schedule 5.6(b).

9. The identity and Federal Employer Identification Number of each Loan Party and each Subsidiary of each Loan Party and each Guarantor and organizational identification number, if any, is set forth on Schedule 5.6(c). (Please Use Form Attached)
10. No Loan Party has any Commercial Tort Claims, except as set forth on Schedule 5.6(d).
11. There are no judgments, actions, suits, proceedings or other litigation pending by or against or threatened by or against any Loan Party, any of its Subsidiaries and/or any of its Affiliates or any of its officers or principals, except for the Case and as set forth on Schedule 5.7(b).
12. Since its date of organization, the name as set forth in each Loan Party's organizational documentation filed of record with the applicable state authority has been changed as follows: N/A
13. Since the date of its organization, each Loan Party has made or entered into the following mergers or acquisitions:

On March 31, 2010, Groeb Farms, Inc. acquired Miller's American Honey, Inc., which became a wholly-owned subsidiary of Groeb Farms, Inc. On June 30, 2010, Miller's American Honey, Inc. merged with Groeb Farms, Inc.

In March 2007, Groeb Farms, Inc. merged with GF Acquisition, Inc. GF Acquisition, Inc. was formed for the sole purpose of acquiring Groeb Farms, Inc.

Prior to 2007, Groeb Farms acquired a fresh salsa company (Gourmet Jose), which was sold in early 2008.
14. The assets of each Loan Party and each Subsidiary of each Loan Party are owned and held free and clear of Liens, mortgages, pledges, security interests, encumbrances or charges except as set forth below: See Schedule P-2 attached to the Agreement.
15. No Loan Party or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any Pension Plan other than (A) on the Closing Date, those listed in Schedule 5.11(d) and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.
16. Each Loan Party has been and remains in compliance with all environmental laws applicable to its business or operations except as set forth on Schedule 5.12 and except to the extent that the failure to be in compliance therewith could not reasonably be expected to result in a Material Adverse Change.
17. No Loan Party has any Deposit Accounts, investment accounts, Securities Accounts or similar accounts with any bank, securities intermediary or other financial institution, except as set forth on Schedule 5.15 for the purposes and of the types indicated therein and except as otherwise permitted in Section 7.11(b).
18. No Loan Party is a party to or bound by an collective bargaining or similar agreement with any union, labor organization or other bargaining agent except as set forth below (indicate date of agreement, parties to agreement, description of employees covered, and date of termination): None
19. Set forth on Schedule 5.17 is a reasonably detailed description of each Material Contract of each Loan Party and each of its Subsidiaries as of the date of the Agreement.
20. Set forth on Schedule 5.19 is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date.
21. No Loan Party has made any loans or advances or guaranteed or otherwise become liable for the obligations of any others, except as set forth below:

One or more members of the Groeb family is indebted to Groeb Farms, Inc. in the approximate amount of \$185,000 plus interest in connection with the sale of a division of Groeb Farms, Inc.

22. No Loan Party has any Chattel Paper (whether tangible or electronic) or instruments as of the date hereof, except as follows: None
23. No Loan Party owns or licenses any Trademarks, Patents, Copyrights or other Intellectual Property, and is not a party to any Intellectual Property License except as set forth on Schedule 5.25 (indicate type of Intellectual Property and whether owned or licensed, registration number, date of registration, and, if licensed, the name and address of the licensor).
24. Schedule 5.26(a) sets forth all real property owned by each Loan Party.
25. The Inventory, Equipment and other goods of each Loan Party are located only at the locations set forth on Schedule 5.29.
26. Set forth on Schedule 5.31 is a reasonably detailed description of each Material License of each Loan Party and each of its Subsidiaries as of the date of this Agreement.
27. Set forth on Schedule 5.33 is a list of all Eligible Equipment owned by each Loan Party as of the date of this Agreement.
28. At the present time, there are no delinquent taxes due (including, but not limited to, all payroll taxes, personal property taxes, real estate taxes or income taxes) except as follows:

In connection with an audit, the IRS determined that Groeb Farms, Inc. owes an additional \$1,372 plus interest and penalties for the tax year 2010. Groeb Farms, Inc. has not yet paid this tax deficiency because it has not received the final bill from the IRS.

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Lender shall be entitled to rely upon the foregoing in all respects and the undersigned is duly authorized to execute and deliver this Information Certificate on behalf of each Loan Party.

Very truly yours,

GROEB FARMS, INC.

By: 

Name: Jack M. Irvin, Jr.

Title: Vice-President and Chief Financial Officer

Schedule 5.1(b)

TO INFORMATION CERTIFICATE

Capitalization of Borrower

Organization Chart

Items (i), (iv): Capital Stock, Organization Chart

See attached.

Item (ii):

See attached.

Item (iii):

Investment Agreement for 78,500 Shares of Convertible Preferred Stock and 2,500 Shares of Series D Common Stock issued by GF Acquisition, Inc., dated as of March 16, 2007, as amended

Investment Agreement for 26,923 Shares of Series C 6% Convertible Preferred Stock issued by Groeb Farms, Inc., dated as of March 31, 2010, as amended

Securities Purchase Agreement among Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., Marquette Capital Fund I, LP, GF Acquisition, Inc. and Groeb Farms, Inc., dated March 16, 2007, as amended

Securities Purchase Agreement among Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., Marquette Capital Fund I, LP and Groeb Farms, Inc., dated March 31, 2010, as amended

Executive Investment/Shareholder Agreement between GF Acquisition, Inc. and Ernest L. Groeb, dated as of March 16, 2007¹

Groeb Farms, Inc. has additional shareholder agreements with other employees and such shareholder agreements are similar to Ernest L. Groeb's Executive Investment/Shareholder Agreement

¹ Groeb Farms, Inc. has repurchased Ernie L. Groeb's common stock and believes this Executive Investment/Shareholder Agreement has been terminated. Ernie L. Groeb disagrees and believes such agreement is still in effect.

GROEB FARMS, INC.
PRO FORMA OWNERSHIP

As of August 31, 2013

Updated: 9/18/13

As of August 31, 2013			Updated: 9/18/13					Primary Ownership		Fully Diluted Ownership		
Investor	Invest Date	Investment	Par Value	Equity Portion	APIC Portion	Avg. \$/Share	Less: Treasury	Shares	%	Shares	%	Class Of Stock
Management												
Common Shares - Series D												
Michael R. Modjeski	12/31/09	59,420	1	1,000	58,420	59.42		1,000	0.78%	1,000	0.67%	Common D
Craig S. Moore	12/31/09	50,000	1	1,000	49,000	50.00		1,000	0.78%	1,000	0.67%	Common D
Joyce Darlene Schlachter	12/31/09	50,000	1	1,000	49,000	50.00		1,000	0.78%	1,000	0.67%	Common D
Jack Irvin	12/31/09	50,000	1	1,000	49,000	50.00		1,000	0.78%	1,000	0.67%	Common D
Alison Tringale	11/4/10	115,206	1	1,266	113,940	91.00		1,266	0.99%	1,266	0.85%	Common D
Total Common D		324,626		5,266	319,360		0	5,266	4.13%	5,266	3.55%	
Conv. Preferred - Series B												
Ernest L. Groeb	3/16/07	469,500	100	469,500	0	100.00		4,695	3.68%	4,695	3.17%	Pref B
Troy L. Groeb	3/16/07	469,500	100	469,500	0	100.00		4,695	3.68%	4,695	3.17%	Pref B
Total Conv. Preferred Series B		939,000		939,000	0			9,390	7.36%	9,390	6.34%	
Conv. Preferred Series C												
Groeb Farms Partnership	4/1/10	930,540	130	930,540	0	130.00		7,158	5.61%	7,158	4.83%	Pref C
Joellen Sullivan	4/1/10	45,240	130	45,240	0	130.00		348	0.27%	348	0.23%	Pref C
Alison Tringale	11/4/10	45,240	130	45,240	0	130.00		348	0.27%	348	0.23%	Pref C
Total Conv. Preferred Series C		1,021,020		1,021,020	0			7,854	6.16%	7,854	5.30%	
Total Management		2,284,646		1,965,286	319,360		0	22,510	17.65%	22,510	15.19%	
Board of Directors												
Restricted Common Shares - Series F												
George W. Cawman	12/18/07	1,500	\$1	\$1,500	\$0	1.00		1,500	1.18%	1,500	1.01%	Common F
Robert G. Bush	12/18/07	250	1	250	0	1.00		250	0.20%	250	0.17%	Common F
Kim W. Jenkins	12/18/07	100	1	100	0	1.00		100	0.08%	100	0.07%	Common F
Frank H. Barker	2/23/10	0	1	0	0	1.00		0	0.00%	825	0.56%	Common F
P. Kim Packard	2/23/10	500	1	500	0	1.00		500	0.39%	825	0.56%	Common F
J. William Petty, Trustee of Carolyn V. Petty 2000 Trust U/A/D 2/25/2000	12/18/07	1,000	1	1,000	0	1.00		1,000	0.78%	1,000	0.67%	Common F
Total Restricted Common F		3,350		3,350	0			3,350	2.63%	4,500	3.04%	
Conv. Preferred Series C												
Francis H. Barker	4/1/10	53,560	130	53,560	0	130.00		412	0.32%	412	0.28%	Pref C
George W. Cawman, Jr.	4/1/10	249,990	130	249,990	0	130.00		1,923	1.51%	1,923	1.30%	Pref C
J. William Petty	4/1/10	75,010	130	75,010	0	130.00		577	0.45%	577	0.39%	Pref C
John C. Morley	4/1/10	31,720	130	31,720	0	130.00		244	0.19%	244	0.16%	Pref C
Lanny A. Passaro Trust	4/1/10	31,720	130	31,720	0	130.00		244	0.19%	244	0.16%	Pref C
P. Kim Packard	4/1/10	18,330	130	18,330	0	130.00		141	0.11%	141	0.10%	Pref C
Robert G. Bush	4/1/10	99,190	130	99,190	0	130.00		763	0.60%	763	0.51%	Pref C
Jack C. Meng	4/1/10	63,440	130	63,440	0	130.00		488	0.38%	488	0.33%	Pref C
Thomas R. Liebermann	4/1/10	4,940	130	4,940	0	130.00		38	0.03%	38	0.03%	Pref C
Total Conv. Preferred Series C		627,900		627,900	0			4,830	3.79%	4,830	3.26%	
Total Board of Directors		631,250		631,250	0		0	8,180	6.41%	9,330	6.30%	

GROEB FARMS, INC.
PRO FORMA OWNERSHIP

As of August 31, 2013

Updated: 9/18/13

As of August 31, 2013	Updated: 9/18/13								Primary Ownership		Fully Diluted Ownership		
Investor	Invest Date	Investment	Par Value	Equity Portion	APIC Portion	Avg. \$/Share	Less: Treasury	Shares	%	Shares	%	Class Of Stock	
Outside Investors													
Conv. Preferred Series A													
Horizon Capital Partners III, L.P.	3/16/07	1,411,000	\$100	\$1,411,000	\$0	100.00		14,110	11.06%	14,110	9.52%	Pref A	
Marquette Capital Fund I, L.P.	3/16/07	1,700,000	100	1,700,000	0	100.00		17,000	13.33%	17,000	11.47%	Pref A	
Argosy Investment Partners III, L.P.	3/16/07	3,200,000	100	3,200,000	0	100.00		32,000	25.09%	32,000	21.59%	Pref A	
George W. Cawman	3/16/07	250,000	100	250,000	0	100.00		2,500	1.96%	2,500	1.69%	Pref A	
Howard S. Goss	3/16/07	50,000	100	50,000	0	100.00		500	0.39%	500	0.34%	Pref A	
Thomas R. Liebermann	3/16/07	25,000	100	25,000	0	100.00		250	0.20%	250	0.17%	Pref A	
Jack C. Meng	3/16/07	100,000	100	100,000	0	100.00		1,000	0.78%	1,000	0.67%	Pref A	
John C. Morley	3/16/07	50,000	100	50,000	0	100.00		500	0.39%	500	0.34%	Pref A	
Lanny A. Passaro Trust	3/16/07	50,000	100	50,000	0	100.00		500	0.39%	500	0.34%	Pref A	
J. William Petty	3/16/07	75,000	100	75,000	0	100.00		750	0.59%	750	0.51%	Pref A	
Total Conv. Preferred Series A		6,911,000		6,911,000	0			69,110	54.19%	69,110	46.63%		
Conv. Preferred Series C													
Horizon Capital Partners III, L.P.	4/1/10	375,060	130	375,050	10	130.00		2,885	2.26%	2,885	1.95%	Pref C	
Marquette Capital Fund I, L.P.	4/1/10	573,690	130	573,690	0	130.00		4,413	3.46%	4,413	2.98%	Pref C	
Argosy Investment Partners III, L.P.	4/1/10	947,570	130	947,570	0	130.00		7,289	5.72%	7,289	4.92%	Pref C	
Total Conv. Preferred Series C		1,896,320		1,896,310	10			14,587	11.44%	14,587	9.84%		
Common Shares - Series E													
Horizon Capital Partners III, L.P.	3/16/07	6,567	1	6,567	0	1.00		6,567	5.15%	6,567	4.43%	Common E	
Horizon Partners, Ltd.	3/16/07	6,567	1	6,567	0	1.00		6,567	5.15%	6,567	4.43%	Common E	
Total Common Shares Series E		13,134		13,134	0			13,134	10.30%	13,134	8.86%		
Junior Subordinate Note Warrants 'C'													
Horizon Capital Partners III, L.P.	3/16/07	—	1	—	—	1.00		—	—	900	0.61%		
Marquette Capital Fund I, L.P.	3/16/07	—	1	—	—	1.00		—	—	5,103	3.44%		
Argosy Investment Partners III, L.P.	3/16/07	—	1	—	—	1.00		—	—	4,504	3.04%		
Total Warrants		0		0	0			0	0.00%	10,507	7.09%		
Senior Subordinate Note Warrants 'G'													
Horizon Capital Partners III, L.P.	3/31/10	—	1	—	—	1.00		—	—	193	0.13%		
Marquette Capital Fund I, L.P.	3/31/10	—	1	—	—	1.00		—	—	4,692	3.17%		
Argosy Investment Partners III, L.P.	3/31/10	—	1	—	—	1.00		—	—	4,139	2.79%		
Total Warrants		0		0	0			0	0.00%	9,024	6.09%		
Total Outside Investors		8,820,454		8,820,444	10		0	96,831	75.93%	116,362	78.52%		
TOTAL ACTIVE SHARES		\$11,736,350		11,416,980	319,370		0	127,521	100.00%	148,202	100.00%		

**GROEB FARMS, INC.
PRO FORMA OWNERSHIP**

As of August 31, 2013

Updated: 9/18/13

Investor	Invest Date	Investment	Par Value	Equity Portion	APIC Portion	Avg. \$/Share	Less: Treasury	Primary Ownership		Fully Diluted Ownership		Class Of Stock
								Shares	%	Shares	%	
TOTAL ACTIVE SHARES		<u>\$11,736,350</u>		<u>11,416,980</u>	<u>319,370</u>		<u>0</u>	<u>127,521</u>	<u>100.00%</u>	<u>148,202</u>	<u>100.00%</u>	

Treasury Shares

Repurchased from: Issuance Date: Repurchased:

Common D:

Ernest L. Groeb	3/16/07	8/3/2012	\$125,000	\$1	\$0	\$125,000	50.00	-2,500	0	0.00%	0	0.00%	Common D
Ernest L. Groeb	4/1/10	8/3/2012	51,506	1	0	51,506	91.00	-566	0	0.00%	0	0.00%	Common D
Troy L. Groeb	12/31/09	11/19/2012	59,420	1	0	59,420	59.42	-1,000	0	0.00%	0	0.00%	Common D
Troy L. Groeb	4/1/10	11/19/2012	24,206	1	0	24,206	91.00	-266	0	0.00%	0	0.00%	Common D
Joellen Sullivan	12/31/09	11/19/2012	59,420	1	0	59,420	59.42	-1,000	0	0.00%	0	0.00%	Common D
Joellen Sullivan	4/1/10	11/19/2012	24,206	1	0	24,206	91.00	-266	0	0.00%	0	0.00%	Common D

Common F:

Ernest L. Groeb	3/16/07	8/3/2012	9,851	1	0	9,851	1.00	-9,851	0	0.00%	0	0.00%	Common F
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Total Treasury APIC

<u>353,609</u>	<u>-15,449</u>	<u>0</u>	<u>0.00%</u>	<u>0</u>	<u>0.00%</u>
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TOTAL Additional Paid-in Capital *(ties to Balance Sheet)*

672,979

Schedule 5.1(c)

TO INFORMATION CERTIFICATE

Subsidiaries; Affiliates; Investments

Part 1 – Subsidiaries of Borrower (50% or more owned by Borrower)

Name	Jurisdiction of Organization	Percentage Owned
None		

Part 2 – Affiliates of Borrower (Less than 50% Owned by Borrower)

Name	Jurisdiction of Organization	Percentage Owned
None		

Part 3 – Affiliates of Borrower (Subject to common ownership with Borrower)

Name	Jurisdiction of Organization	Owner	Percentage Owned
None			

Part 4 – Owners of Borrower

Name	Jurisdiction of Organization	Percentage Owned
See Schedule 5.1(b)		

Schedule 5.6(a)

TO INFORMATION CERTIFICATE

Exact Legal Names and Jurisdiction of Organization of Borrower

Exact Legal Name	Jurisdiction of Organization
Groeb Farms, Inc.	Michigan

Schedule 5.6(b)

TO INFORMATION CERTIFICATE

Locations

Part 1 - Chief Executive Office and Mailing Address

Borrower:

10464 Bryan Highway
Onsted, MI 49265

Part 2 - Location of Books and Records

Borrower:

10464 Bryan Highway
Onsted, MI 49265

2301 E Michigan Ave
Jackson, MI 49202

Schedule 5.6(c)

TO INFORMATION CERTIFICATE

Federal Employer Identification Number
Organizational Identification Number
for Borrower

(Please Use Form Attached For Tax Identification Number)

Name	Organizational Identification Number	Federal Identification Number
Groeb Farms, Inc.	371576	38-2778390

Schedule 5.6(d)

TO INFORMATION CERTIFICATE

Commercial Tort Claims

None

Schedule 5.7(b)

TO INFORMATION CERTIFICATE

Judgments/ Pending Litigation

Borrower:

Groeb Farms, Inc. v. China Industrial Manufacturing Group, Inc.: Groeb Farms and China Industrial entered into two contracts pursuant to which China Industrial agreed to deliver a total of 262 loads of pure Indonesian light amber honey ("Honey") to Groeb Farms. China Industrial delivered 30 loads of Honey to Groeb Farms but failed to deliver the remaining 232 loads of Honey to Groeb Farms as required by the two contracts. As a result of China Industrial's failure to deliver the remaining 232 loads of Honey to Groeb Farms, Groeb Farms incurred significant damages. Groeb Farms brought suit against China Industrial for breach of contract. China Industrial asserted a counterclaim against Groeb Farms seeking the recovery of payments that were withheld from China Industrial based on the failure to deliver the loads of Honey. The case was settled by a confidential settlement agreement, and the case was dismissed on April 29, 2013.

Little Bee Impex / Kashmir Apiaries Exports ("Little Bee"): Little Bee agreed to deliver 380 loads of White, Light Amber and Extra Light Amber Pure Bees Honey to Groeb Farms no later than May 11, 2011. Little Bee failed to deliver the specified loads of honey and caused Groeb Farms to incur significant damages. Groeb Farms set off against the amounts due to Little Bee the damages that Groeb Farms has incurred. Little Bee asserted claims against Groeb Farms for the failure to pay such amounts due to Little Bee. Little Bee and Groeb Farms reached a confidential settlement agreement to resolve the matter during arbitration. Once the settlement agreement is fulfilled, the arbitration proceeding will be dismissed. Groeb Farms' potential liability is not covered by insurance.

Consolidated Class Actions: In April 2013, two civil putative class action lawsuits brought by producers, packers and/or distributors of honey were filed in the United States District Court for the Northern District of Illinois. In Adee Honey Farms, et al v. Groeb Farms, et al., Case No. 1:13-cv-02922 (the "Adee Lawsuit"), the putative class alleges violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") and Lanham Act. In Moore's Honey Farm, et al. v. Groeb Farms, Inc., et al., Case No. 1:13-cv-02905 (the "Moore Lawsuit" and collectively with the Adee Lawsuit the "Putative Class Actions"), the putative class alleges violations of RICO and common law fraud, negligent misrepresentations, conspiracy, and clandestine wrongful importation without paying the anti-dumping duties. On June 24, 2013, the Putative Class Actions were consolidated (hereinafter, the "Putative Class Action") by Order of the Court handling the Moore Lawsuit (the "Consolidation Order"). The Putative Class Action is based on the factual statements contained in the DPA regarding the purchase of trans-shipped honey. While none of the claims make a specific damage demand, RICO and Lanham Act cases carry a potential for treble damages. All claims also seek attorneys' fees. On September 9, 2013, the court granted the parties' agreed order to extend the deadline for the Putative Class Action Plaintiffs to file an amended complaint until October 24, 2013. Settlement discussions in this matter are ongoing. Groeb Farms' potential liability is covered by insurance to the extent set forth in the insurer's reservation of rights letter.

Yager v. Groeb Farms: Karen Yager, a former Groeb Farms salesperson, filed a suit in state court in Maryland on May 20, 2013 alleging gender discrimination with respect to a layoff, failure to pay all compensation owed with respect to a bonus agreement, and breach of contract with respect to the same bonus agreement. Yager asserts damages in excess of \$75,000.00 Groeb Farms removed the case to federal court on July 25, 2013. The case is currently stayed until November 15, 2013 to allow for settlement discussions, which are ongoing. Groeb Farms' potential liability is not covered by insurance.

Peter Nelson (California Workers' Compensation Matter): Nelson, a former employee, filed a claim for workers' compensation, and a claim for retaliatory discharge based on the filing of a workers' compensation claim with the California Workers' Compensation Appeal Board. The retaliatory discharge claim was settled in June 2013. The workers' compensation matter is ongoing. Groeb Farms' potential liability based on the workers' compensation claim, which is estimated to be \$25,000, is covered by insurance.

Jodi Sullivan Matter (threatened litigation): Jodi Sullivan is a former Groeb Farms employee who has threatened to sue Groeb Farms. On or about September 26, 2012, the Company terminated Ms. Sullivan's employment as part of a reduction in force and, in connection with such termination, elected to repurchase her Series D Common Stock for the estimated fair market value, which was in the aggregate \$1,266. Shortly after her termination, Ms. Sullivan retained an attorney, Marvin A. Robon, of Barkan & Robon, Ltd., Maumee, Ohio, alleging, among other things, improper termination, improper purchase of her Series D Common stock, failure to purchase her preferred stock and other claims. Although the parties entered into settlement discussions, no conclusion was ever reached and Ms. Sullivan may file a lawsuit against Groeb Farms. Groeb Farms' potential liability is not covered by insurance.

Schedule 5.11(d)

TO INFORMATION CERTIFICATE

Pension Plans

Borrower:

Groeb Farms, Inc. maintains a 401(k) plan.

Schedule 5.12

TO INFORMATION CERTIFICATE

Environmental Compliance

None

Schedule 5.15

TO INFORMATION CERTIFICATE

Deposit Accounts; Investment Accounts

Part 1 - Deposit Accounts

Borrower:

Name and Address of Bank	Account No.	Purpose
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122226913	Operating Account
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122234636	Cash Collection Account
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122226921	BASIC Account
Wells Fargo Bank, National Association P.O. Box 63020 San Francisco, CA 94163	4122407232	Petty Cash Account
Comerica Bank 11351 Brooklyn Rd. Brooklyn, MI 49230	Box 663	Safety Deposit Box
Old National Bank P.O. Box 718 Evansville IN 47705	5012453655	Petty Cash Account

Part 2 - Investment and Other Accounts

Borrower:

None

Schedule 5.17

TO INFORMATION CERTIFICATE

Material Contracts

Credit and Security Agreement, dated as of January 30, 2012, between Groeb Farms, Inc. and HC Capital Holdings 0909A, LLC (as successor to Wells Fargo Bank, National Association), as amended from time to time.

The agreements evidencing the indebtedness set forth on Schedule 5.19.

Schedule 5.19

TO INFORMATION CERTIFICATE

Existing Indebtedness

Part 1 - Direct Debt

Borrower:

The Prepetition Obligations.

Name/Address of Payee	Principal Balance as of Closing Date	Nature of Debt	Term
Ernest L. Groeb, as Shareholders' Representative 10464 Bryan Highway Onsted, MI 49265	\$1,500,000	Junior subordinated debt	Debt matures March 31, 2017
Argosy Investment Partners III, L.P. 950 West Valley Road, Suite 2900 Wayne, PA 19087 Horizon Capital Partners III, L.P. 3838 Tamiami Trail N, Suite 408 Naples, Florida Marquette Capital Fund I, LP 60 South Sixth Street Minneapolis, MN	\$3,500,000	Senior subordinated debt	Debt matures March 31, 2017
Argosy Investment Partners III, L.P. 950 West Valley Road, Suite 2900 Wayne, PA 19087 Horizon Capital Partners III, L.P. c/o Horizon Partners Ltd. 3838 Tamiami Trail N, Suite 408 Naples, Florida Marquette Capital Fund I, LP 60 South Sixth Street Minneapolis, MN	\$3,500,000	Senior subordinated debt	Debt matures March 31, 2017
Olesanik Family Living Trust 5100 Baggins Hill Road Templeton, CA 93485	\$423,762	Unsecured debt	Debt matures July 2017

Part 2 – Guarantees

Borrower:

Name/Address of Payee	Principal Balance as of Closing Date	Nature of Debt	Term
None			

Schedule 5.24

TO INFORMATION CERTIFICATE

Collective Bargaining or Similar Agreements

None

Schedule 5.25

TO INFORMATION CERTIFICATE

Intellectual Property

Part 1 – Trademarks Owned

Borrower:

TRADEMARK	REGISTRATION NUMBER	REGISTRATION DATE
	3907823	01/18/11
GROEB FARMS, INC.	3907825	01/18/11
SUPERIOR HONEY	3061871	02/28/06

Trademark Application	Application/Serial Number	Application Date
None		

Part 2 – Trademarks Licensed

Borrower:

Trademark	License Number	Effective Date of License	Expiration Date of License	Licensor
Smokey the Bear	#12-007	July 1, 2012	June 30, 2015	Forest Service, United States Department of Agriculture

Trademark Application	Application/Serial Number	Application Date
None		

Part 3 – Patents Owned

Borrower:

U.S. Patent No.	Title	File Date	Issue Date
None			

U.S. Application No.	Title	Priority Date
None		

Part 4 – Patents Licensed

Borrower:

Patent Description	Registration Number	Registration Date	Expiration Date	Licensor
None				

Patent Application	Application / Serial Number	Application Date
None		

Part 5 – Copyrights Owned

Borrower:

Copyright	Registration Number	Registration Date
None		

Part 6 – Copyrights Licensed

Borrower:

Copyright	Registration Number	Registration Date	Licensor
None			

Part 7 – Other License Agreements

Borrower:

Name of Document	Date of Document	Licensor	Term	Licensed Intellectual Property
None				

Schedule 5.26(a)

TO INFORMATION CERTIFICATE

Owned Real Estate

None.

Schedule 5.29

TO INFORMATION CERTIFICATE

Locations of Inventory and Equipment

Locations of Inventory, Equipment and Other Assets**Borrower:**

Address	Owned/Leased/Third Party	Name/Address of Lessor or Third Party, as Applicable
10464 Bryan Highway Onsted, MI 49265	Leased	Ernest L. Groeb, Jr. Trust B, United Bank & Trust, Successor Trustee PO Box 248 Tecumseh, MI 749286
3220 SE County Highway 484 Bellevue, FL 34421	Leased	Groeb Farms, LLC P.O. Box 398 Bellevue, FL 34424
31 Plymouth St. Mansfield, MA 02048	Public Warehouse	Barrett Distribution Center 31 Plymouth St. Mansfield, MA 02048
3601 S. Leonard Rd. St. Joseph, MO 64503	Public Warehouse	BMS Logistics, Inc. 100 N. Airport Rd. St. Joseph, MO 64503
215 Industrial Drive #D Hampshire, IL 60140-8900	Public Warehouse	Food Ingredients, Inc. 2425 Alft Lane Elgin, IL 60124
2490 S. Broadway St., Bldg 7 Green Bay, WI 54304	Public Warehouse	Northland Cold Storage, Inc. P.O. Box 11796 Green Bay, WI 54307
26525 Danti Ct. Hayward, CA 94545	Public Warehouse	Green Packing, Inc. 3650 Perada Dr. Walnut Creek, CA 94598
1455 Riverview Drive San Bernardino, CA 92408	Leased	GT94, LP 9171 Wilshire Blvd. Suite 900 Hollywood, CA 90210

Schedule 5.31

TO INFORMATION CERTIFICATE

Material Licenses

None

Schedule 5.32

TO INFORMATION CERTIFICATE

Existing Liens on Farm Products

None

Schedule 5.33

TO INFORMATION CERTIFICATE

Eligible Equipment

Trailers

Year	Description	VIN	Hilco Appraisal Ref#
2011	Utility 53' Trailer	1UYVS253XBG147601	39
2011	Utility 53' Trailer	1UYVS253XBG147602	40
2010	Utility 53' Trailer	1UYVS2538AG917602	41
2010	Utility 53' Trailer	1UYVS2536AG917601	42
2010	Utility 53' Trailer	1UYVS2534AG917502	43
2010	Utility 53' Trailer	1UYVS2532AG917501	44
2009	Utility 53' Trailer	1UYVS25339G631202	45
2009	Utility 53' Trailer	1UYVS25319G631201	46
2008	Utility 53' Trailer	1UYVS25358G404902	47
2008	Utility 53' Trailer	1UYVS25358G404901	48
2008	Utility 53' Trailer	1UYVS25328G375309	49
2008	Utility 53' Trailer	1UYVS25338G354307	50
2008	Utility 53' Trailer	1UYVS25338G354310	51
2006	Utility 53' Trailer	1UYVS25326G892302	52
2006	Utility 53' Trailer	1UYVS25306G892301	53
2006	Utility 53' Trailer	1UYVS25316P826002	54
2006	Utility 53' Trailer	1UYVS253X6G761914	55

Tractors

2005	Freightliner Model M2 106, 4x2 water truck	1FVACVDD75HV43767	64
2003	Freightliner Model CL-120T, 6x4 Tractor	1FUJA6CG63LK43708	66

Schedule 7.15

TO INFORMATION CERTIFICATE

Consignment, Bill and Hold, Sale or Return, Sale on Approval or Conditional Sale Arrangements

None

Schedule 7.16

TO INFORMATION CERTIFICATE

Inventory With Bailee, Warehouseman, Processor, etc.

Address	Type of Bailee	Name/Address of Bailee
31 Plymouth St. Mansfield, MA 02048	Public Warehouse	Barrett Distribution Center 31 Plymouth St. Mansfield, MA 02048
3601 S. Leonard Rd. St. Joseph, MO 64503	Public Warehouse	BMS Logistics, Inc. 100 N. Airport Rd. St. Joseph, MO 64503
2490 S. Broadway St., Bldg 7 Green Bay, WI 54304	Public Warehouse	Northland Cold Storage, Inc. P.O. Box 11796 Green Bay, WI 54307
30039 Ahern Avenue Union City CA 94587	Public Warehouse	Green Packaging, Inc. 3650 Peradad Dr. Walnut Creek, CA 94598

Schedule A-1

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

Collection Account

Account No. 4122234636 of Borrower maintained with Wells Fargo Bank, National Association.

Schedule A-2

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

Authorized Persons

Rolf Richter, President and Chief Executive Officer

Jack M. Irvin, Jr., Vice-President, Chief Financial Officer and Secretary

Schedule D-1

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

Designated Account

Account No. 4122226913 of Borrower maintained with Wells Fargo Bank, National Association.

Schedule P-1

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

Permitted Investments

One or more individual members of the Groeb family is indebted to Groeb Farms, Inc. in the approximate amount of \$185,000 plus interest in connection with the sale of a division of Groeb Farms, Inc.

Certain employees are indebted to Groeb Farms, Inc. in the approximate amount of \$102,000 for the purchase of stock. Due to the value of Groeb Farms, Inc.'s stock this payment obligation may have been terminated.

Schedule P-2

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

Permitted Liens

Liens securing the Prepetition Obligations.

Debtor Searched [Debtor Found]	Jurisdiction	Secured Party	Filing No.	Filing Date	Lien Description
Groeb Farms, Inc.	Michigan Secretary of State	Wells Fargo Bank, N.A.	2010088737-8	06/29/10	(2) Sellick Rough Terrain Forklifts SLP50JDS-4 and all equipment parts, substitutions and replacements and the proceeds thereof
Groeb Farms, Inc.	Michigan Secretary of State	Toyota Motor Credit Corp	2011078647-7	06/01/11	(1) Toyota 7BNCU20 with Crown Industrial Battery 18-125-17 and Energic Charger
Groeb Farms, Inc.	Michigan Secretary of State	Marquette Capital Fund I, LP	2012015872-1	01/30/12	All of the Debtor's right, title and interest in and to all tangible and intangible assets of any type or description, including the following, whether now owned and existing or hereafter created or acquired, wherever located, together with all additions and accessions and all proceeds and products thereof: all accounts, chattel paper, instruments, investment property, equipment, inventory, general intangibles, deposit accounts, documents, letter of credit rights, any supporting obligations relating to the foregoing, any insurance coverage relating to the foregoing and all books and records of the Debtor.
Groeb Farms, Inc.	Michigan Secretary of State	Raymond Leasing Corporation	2012178465-4	12/26/12	All material handling equipment and associated accessories, including without limitation, lift trucks, pallet trucks, orderpickers, batteries and chargers in the possession of Debtor or hereafter acquired by Debtor in accordance with Equipment Master Lease Schedule No 306691 or any schedule thereunder.
Groeb Farms, Inc.	Michigan Secretary of State	TCF Equipment Finance, Inc.	2013050737-0	04/10/13	All Equipment and other Goods now or hereafter subject to Lease Agreement No TC-04131896 dated 4/3/2013, including (1) Signature Touch Metal Detector with Conveyor, USB, together with modifications, additions, attachments, accessories, parts, repairs and replacement thereto, and all substitutes for and proceeds of any of the Equipment, including without limitation insurance proceeds.
Groeb Farms, Inc.	Michigan Secretary of State	HC Capital Holdings 0909A, LLC	2012002923-5 2013135415-0	01/06/2012 09/18/2013	All assets.
Groeb Farms, Inc.	Michigan Secretary of State	Navistar Financial			2 Freightliners

Debtor Searched [Debtor Found]	Jurisdiction	Secured Party	Filing No.	Filing Date	Lien Description
Groeb Farms, Inc.	Michigan Secretary of State	GE Capital			5 Freightliners; 1 Tractor; 2 Trailers
Groeb Farms, Inc.	Michigan Secretary of State	Ford Motor Credit			2011 Ford Escape
Groeb Farms, Inc.	Michigan Secretary of State	Xerox			Fax; Copier
Groeb Farms, Inc.	Michigan Secretary of State	Konica Minolta			Printer; Copier
Groeb Farms, Inc.	Michigan Secretary of State	Toyota Financial			1 Forklift

EXHIBIT F

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

FORM OF BORROWING REQUEST

BORROWING REQUEST

_____, 201__

HC CAPITAL HOLDINGS 0909A, LLC
c/o Peak Rock Capital
13413 Galleria Circle, Suite Q-300
Austin, TX 78738
Attention: Robert M. Strauss
Fax: (512) 765-6530
Email: Strauss@peakrockcapital.com

Re: **GROEB FARMS, INC.,** a Michigan corporation ("Borrower")

Reference is made to the Senior Secured Superpriority Priming Debtor-In-Possession Credit and Security Agreement dated as of October 3, 2013 (as amended, amended and restated, modified, refinanced and/or restated, or otherwise modified from time to time, the "**Credit Agreement**") among Borrower and **HC CAPITAL HOLDINGS 0909A, LLC**, as Lender. Capitalized terms used herein without definition are used as defined in the Credit Agreement.

Pursuant to Section 2.3(a) of the Credit Agreement, Borrower hereby gives you irrevocable notice of its request for a Borrowing (the "**Proposed Borrowing**") under the Credit Agreement upon the following terms:

- A. Date of the Proposed Borrowing: _____, ____ (the "Funding Date").
- B. Amount of the Advance: \$_____.

Pursuant to Section 4.2 of the Credit Agreement, the undersigned hereby certifies that the following statements are true and correct on the date hereof, both before and after giving effect to the Proposed Borrowing:

- A. The representations and warranties of each Loan Party and its Subsidiaries contained in the Credit Agreement and in the other Loan Documents are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Funding Date, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case such representations and warranties shall continue to be true and correct as of such earlier date);
- B. No Default or Event of Default shall have occurred and be continuing on the Funding Date, nor shall result from the making thereof; and
- C. The Interim Order is in effect, has not been stayed or otherwise subject to appeal and has not been amended or modified; [The Final Order is in effect, has not been stayed or otherwise subject to appeal and has not been amended or modified.]¹

The undersigned certifies that he is the _____ of Borrower, as such he is authorized to execute this certificate on behalf of Borrower.

GROEB FARMS, INC., as Borrower

By: _____
Name:

¹ Following 36 days after the Petition Date only.

EXHIBIT G

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

APPROVED BUDGET

[Attached]

GROEB FARMS INC.

WEEKLY CASH FLOW FORECAST - DIP Budget

(USD in 000's)

Week Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	Weeks
Pre/Post Bankruptcy	Pre BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	1 - 14
Actual/Fcst	Est	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst
Week Ending	9/27	10/4	10/11	10/18	10/25	11/1	11/8	11/15	11/22	11/29	12/6	12/13	12/20	12/27	Total
Total Net Sales	1,934	\$ 1,608	\$ 2,052	\$ 2,052	\$ 2,052	\$ 2,117	\$ 2,375	\$ 2,375	\$ 2,375	\$ 1,425	\$ 2,178	\$ 2,178	\$ 2,178	\$ 1,525	\$ 28,425
<u>CASH FLOW SUMMARY</u>															
Total Cash Receipts	\$ 2,137	\$ 2,148	\$ 1,644	\$ 1,885	\$ 2,054	\$ 2,054	\$ 2,054	\$ 2,118	\$ 2,374	\$ 2,374	\$ 2,374	\$ 1,434	\$ 1,761	\$ 1,761	\$ 28,174
Operating Cash Disbursements:															
Honey Payments	1,268	1,574	2,184	2,635	2,331	2,647	2,116	2,214	1,427	1,727	2,239	2,098	1,444	1,450	27,356
Payroll	177	-	83	81	81	81	81	81	81	81	81	82	78	78	1,145
Other Operating Disbursements	230	454	359	336	331	433	403	347	342	310	485	354	340	313	5,038
Total Operating Disbursements	\$ 1,675	\$ 2,028	\$ 2,626	\$ 3,052	\$ 2,743	\$ 3,160	\$ 2,600	\$ 2,643	\$ 1,850	\$ 2,119	\$ 2,806	\$ 2,534	\$ 1,862	\$ 1,841	\$ 33,539
Bankruptcy Related Costs:															
Shippers & Warehouse Claims	-	42	42	42	42	-	-	-	-	-	-	-	-	-	169
Utility Deposits	-	9	9	-	-	-	-	-	-	-	-	-	-	-	18
Filing Fee	-	1	-	-	-	-	-	-	-	-	-	-	-	-	1
Bankruptcy Related Disbursements	-	52	51	42	42	-	-	-	-	-	-	-	-	-	188
Capital Expenditure	-	-	10	-	10	-	10	-	10	-	10	-	10	-	60
Debt Service	-	6	-	-	-	6	-	-	-	6	-	-	-	-	18
Revolver/DIP Interest	-	73	-	-	-	72	-	-	-	-	86	-	-	-	231
Professional Fees	809	-	40	-	-	-	525	-	636	-	541	-	708	1,000	4,260
Amendment/Bank/Treasury Mgmt Fee	800	405	-	15	405	-	-	15	-	-	-	-	15	-	1,655
Total Disbursements	3,283	2,565	2,727	3,109	3,200	3,237	3,135	2,658	2,496	2,125	3,443	2,534	2,595	2,841	39,951
NET CASH FLOWS	\$ (1,147)	\$ (417)	\$ (1,084)	\$ (1,224)	\$ (1,146)	\$ (1,183)	\$ (1,081)	\$ (539)	\$ (122)	\$ 249	\$ (1,069)	\$ (1,101)	\$ (834)	\$ (1,080)	\$ (11,777)
Total DIP Facility Advances and Prepetition Advances															
Beginning Balance	\$ 15,016	\$ 16,162	\$ 17,432	\$ 18,515	\$ 19,739	\$ 20,885	\$ 22,068	\$ 23,149	\$ 23,688	\$ 23,810	\$ 23,561	\$ 24,630	\$ 25,731	\$ 26,565	15,016
Add: Net Cash Flow	1,147	417	1,084	1,224	1,146	1,183	1,081	539	122	(249)	1,069	1,101	834	1,080	11,777
Add: Term Loan	-	852	-	-	-	-	-	-	-	-	-	-	-	-	852
Ending Balance	\$ 16,162	\$ 17,432	\$ 18,515	\$ 19,739	\$ 20,885	\$ 22,068	\$ 23,149	\$ 23,688	\$ 23,810	\$ 23,561	\$ 24,630	\$ 25,731	\$ 26,565	\$ 27,645	\$ 27,645
Total Collateral	14,830	13,919	14,012	14,294	14,448	14,880	15,351	15,624	15,624	14,891	14,827	15,429	15,978	15,938	
Borrowing Base (collateral after limits & reserves)	14,030	11,769	11,862	12,144	12,298	12,730	13,201	13,474	13,474	12,741	12,677	13,279	13,828	14,788	
(Over)/Under Advance	\$ (2,132)	\$ (5,662)	\$ (6,654)	\$ (7,596)	\$ (8,587)	\$ (9,338)	\$ (9,947)	\$ (10,214)	\$ (10,336)	\$ (10,820)	\$ (11,953)	\$ (12,452)	\$ (12,736)	\$ (12,857)	

EXHIBIT B

Supplemental Approved Budget

DIP Budget

(USD in 000's)

Week Number	0	1	2	3	4	5	6	7	8	9	10	11	12	13	
Pre/Post Bankruptcy	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	Post BR	
Actual/Fcst	Est	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	13 Week
Week Ending	10/25	11/1	11/8	11/15	11/22	11/29	12/6	12/13	12/20	12/27	1/3	1/10	1/17	1/24	Total
Total Net Sales	\$ 2,066	\$ 2,075	\$ 2,340	\$ 2,340	\$ 2,340	\$ 1,404	\$ 2,045	\$ 2,045	\$ 2,045	\$ 1,432	\$ 1,502	\$ 2,221	\$ 2,221	\$ 2,221	26,230
<u>CASH FLOW SUMMARY</u>															
Total Cash Receipts	\$ 2,214	\$ 2,205	\$ 2,046	\$ 2,077	\$ 2,339	\$ 2,339	\$ 2,339	\$ 1,697	\$ 1,655	\$ 1,655	\$ 2,047	\$ 1,543	\$ 1,710	\$ 2,221	\$ 25,874
Operating Cash Disbursements:															
Honey Payments	1,883	2,876	2,881	2,122	1,805	1,120	1,286	1,712	1,638	1,826	2,276	1,962	1,890	1,564	24,958
Payroll	85	86	86	88	88	88	88	89	85	85	85	85	85	85	1,123
Other Operating Payments	190	621	608	555	510	384	562	431	417	386	460	450	341	336	6,063
Total Operating Disbursements	\$ 2,158	\$ 3,584	\$ 3,576	\$ 2,765	\$ 2,404	\$ 1,592	\$ 1,936	\$ 2,232	\$ 2,140	\$ 2,297	\$ 2,820	\$ 2,497	\$ 2,316	\$ 1,985	\$ 32,144
Bankruptcy Related Costs:															
Shippers & Warehouse Claims	11	38	27	-	-	-	-	-	-	-	-	-	-	-	64
Utility Deposits	-	8	8	8	8	-	-	-	-	-	-	-	-	-	32
Filing Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Bankruptcy Related Disbursements	11	46	35	8	8	-	-	-	-	-	-	-	-	-	96
Capital Expenditure	-	-	10	-	10	-	10	-	10	-	10	-	10	-	60
Debt Service	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Revolver/DIP Interest	-	157	-	-	-	-	79	-	-	-	89	-	-	-	324
Professional Fees	-	-	656	-	752	-	569	-	595	-	-	-	-	1,805	4,376
Amendment/Bank/Treasury Mgmt Fee	-	15	-	15	-	-	-	-	15	-	-	-	420	-	465
Total Disbursements	2,169	3,802	4,276	2,788	3,173	1,592	2,594	2,232	2,760	2,297	2,919	2,497	2,746	3,790	37,466
NET CASH FLOWS	\$ 45	\$ (1,597)	\$ (2,231)	\$ (711)	\$ (834)	\$ 748	\$ (255)	\$ (535)	\$ (1,105)	\$ (642)	\$ (871)	\$ (954)	\$ (1,036)	\$ (1,569)	\$ (11,592)
Total DIP Facility Advances and Prepetition Advances															
Beginning Balance	\$ 17,529	\$ 17,484	\$ 19,080	\$ 21,311	\$ 22,022	\$ 22,856	\$ 22,108	\$ 22,363	\$ 22,898	\$ 24,003	\$ 24,646	\$ 25,517	\$ 26,470	\$ 27,507	\$ 17,484
Add: Net Cash Flow	(45)	1,597	2,231	711	834	(748)	255	535	1,105	642	871	954	1,036	1,569	11,592
Ending Balance	\$ 17,484	\$ 19,080	\$ 21,311	\$ 22,022	\$ 22,856	\$ 22,108	\$ 22,363	\$ 22,898	\$ 24,003	\$ 24,646	\$ 25,517	\$ 26,470	\$ 27,507	\$ 29,075	\$ 29,075
Total Collateral	14,130	14,514	15,078	15,317	15,250	14,309	14,368	14,495	14,640	14,551	14,280	15,181	15,670	15,919	
Borrowing Base (collateral after limits & reserves)	13,380	12,364	12,928	13,167	13,100	12,159	12,218	12,345	12,490	12,401	12,130	13,031	13,520	15,169	
(Over)/Under Advance	\$ (4,103)	\$ (6,716)	\$ (8,383)	\$ (8,855)	\$ (9,756)	\$ (9,949)	\$ (10,145)	\$ (10,553)	\$ (11,514)	\$ (12,245)	\$ (13,386)	\$ (13,439)	\$ (13,987)	\$ (13,906)	

Note: Certain expenses payable on or around the Effective Date of the Plan of Reorganization (including, but not limited, the GUCS Litigation Trust and Convenience Class claims) have not been included in the above budget.

EXHIBIT 2: REDLINE FROM FINAL DIP ORDER FILED NOVEMBER 1, 2013

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

) Chapter 11
)
)

~~In re:~~

) Chapter 11

Inserted Cells

GROEB FARMS, INC.

Case No. 13-58200

~~Debtor:~~

) Honorable Walter Shapero
)
)

Debtor:

) Honorable Walter Shapero
)
)

**FINAL ORDER (I) AUTHORIZING THE DEBTOR TO (A) OBTAIN POSTPETITION
FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(~~EC~~), 364(~~ED~~)(1), AND
364(~~EE~~) AND (B) UTILIZE CASH COLLATERAL OF PREPETITION SECURED
ENTITIES PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE
PROTECTION TO PREPETITION SECURED LENDER PURSUANT TO 11 U.S.C. §§
361, 362, 363, AND 364, AND (III) GRANTING RELATED RELIEF**

Upon the motion of Groeb Farms, Inc.,¹ as debtor-in-possession (the “Debtor” or
the “Borrower”) in the above-captioned chapter 11 case (the “Chapter 11 Case”), dated October
1, 2013 (the “Motion”), for entry of the Interim Order (as defined herein) and a final order (this
“Final Order”), under sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), and 364(e) of
title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”),
and Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as
amended, the “Bankruptcy Rules”) and Rule 4001-2 of the Local Bankruptcy Rules of the United
States Bankruptcy Court for the Eastern District of Michigan (the “Local Rules”), seeking,
among other things:

¹ - All defined terms shall have the meaning ascribed to them in DIP Credit Agreement (as defined below) unless
otherwise defined herein.

(i) ~~(i)~~—authorization for ~~Groeb Farms, Inc., as debtor and debtor in possession~~ (the ~~“Borrower”~~) Debtor to obtain post-petition financing in the form of revolving loans drawn under a debtor-in-possession credit facility (the “DIP Facility”), pursuant to the terms of the Interim Order, this Final Order, and the DIP Loan Documents (as defined below), the foregoing transactions to include:

(a) ~~—~~ a senior secured super-priority revolving credit facility providing for the borrowing of loans from time to time in accordance with the Approved Budget (as defined below) in an aggregate maximum principal amount of up to \$27 million, of which up to \$17.1 million (the “Interim Borrowing Amount”) was made available upon entry of the Interim Order;

(b) ~~—~~ the repayment of all the obligations outstanding on account of Advances (as defined in the Prepetition Credit Agreement) other than \$3,000,000 in principal amount (the “Prepetition Facility Advance Repayment”);

(ii) ~~(ii)~~—subject to entry of this Final Order, the repayment of all Term Loan (as defined in the Prepetition Credit Agreement) obligations outstanding under the Prepetition Credit Agreement (the “Prepetition Facility Term Loan Repayment”);

(iii) ~~(iii)~~—authorization for the Debtor to execute and enter into that certain Senior Secured Super-Priority Priming Debtor-In-Possession Credit and Security Agreement, by and between the Borrower and the lender party thereto (the “DIP Lender”), dated as of October ~~3,~~ 3, 2013 (as the same may be amended, restated, supplemented, or otherwise modified from time to time pursuant to the terms thereof, the “DIP Credit Agreement”), a copy of which is attached hereto as Exhibit A, and any related documents and instruments delivered pursuant to or in connection therewith (collectively, the “DIP Loan Documents”), and authorization for the

Debtor to perform such other and further acts as may be required in connection with the DIP Loan Documents;

(iv) ~~(iv)~~ authorization for the Debtor's use of proceeds of the DIP Facility, all cash and equivalents, and cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (as so defined, but excluding any cash collateral subject to prior Non-Primed Liens (as defined below), if any, "Cash Collateral"), and the collection and application of Cash Collateral, pursuant to the terms and conditions set forth in the Interim Order, this Final Order, and the DIP Credit Agreement;

(v) ~~(v)~~ the grant of (i) valid, enforceable, non-avoidable, and fully perfected first priority priming liens on and senior security interests in (including liens pursuant to sections ~~364~~(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code) all DIP Collateral (as defined below) to the DIP Lender to secure all obligations of the Debtor under and with respect to the DIP Facility (collectively, the "DIP Obligations"), and (ii) super-priority claims (including a super-priority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code) to the DIP Lender having recourse to all prepetition and postpetition property of the Debtor's estate, now owned or hereafter acquired, including, subject to and upon entry of this Final Order, any Debtor's rights under section 506(c) of the Bankruptcy Code and the proceeds thereof (but not including, for the avoidance of doubt, Avoidance Actions Proceeds (as defined herein) or D&O Proceeds (as defined herein));

(vi) ~~(vi)~~ the grant of adequate protection to the Prepetition Secured Lender (as defined below) under that certain Credit and Security Agreement, dated as of January 30, 2012 (as amended, restated, supplemented, or otherwise modified from time to time and in effect on

the date hereof, the “Prepetition Credit Agreement”), between the Borrower and HC Capital Holdings 0909A, LLC (the “Prepetition Secured Lender”), on account of (i) the Debtor’s use of Cash Collateral and (ii) the priming of the liens and security interests held by the Prepetition Secured Lender under the Prepetition Credit Agreement and all security agreements, pledge agreements, mortgages, deeds of trust, and other security and ancillary documents executed by the Borrower in favor of the Prepetition Secured Lender in connection therewith (collectively, the “Prepetition Credit Agreement Collateral Documents” and, together with the Prepetition Credit Agreement, the “Prepetition Loan Documents”), as more fully set forth in this Final Order;

(vii) ~~(vii)~~ the grant of adequate protection to each holder of a debenture (the “Senior Subordinated Notes”) under that certain Securities Purchase Agreement (the “Senior Subordinated Notes Agreement”), dated as of March 31, 2010 (as amended, restated, supplemented, or otherwise modified from time to time and in effect on the date hereof), between the Borrower, on one hand, and Argosy Investment Partners III, L.P., Horizon Capital Partners III, L.P., and Marquette Capital Fund I, LP, on the other hand (collectively, the “Senior Subordinated Noteholders”) that executed a restructuring support agreement and has not and does not object to the relief requested by the Motion, on account of (i) the Debtor’s use of Cash Collateral and (ii) the priming of the liens and security interests held by the Senior Subordinated Noteholders under the Senior Subordinated Notes Agreement and all security agreements, pledge agreements, mortgages, deeds of trust, and other security and ancillary documents executed by the Borrower in favor of the Senior Subordinated Notes in connection therewith (collectively, the “Prepetition Senior Subordinated Note Collateral Documents” and, together with the Prepetition

Senior Subordinated Note Credit Agreement, the “Prepetition Senior Subordinated Note Documents”), as more fully set forth in this Final Order;

(viii) ~~(viii)~~ the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral or the Prepetition Collateral (as defined below) pursuant to section 506(c) of the Bankruptcy Code or other applicable law, and the grant of rights under section 552(b) of the Bankruptcy Code;

(ix) ~~(ix)~~ pursuant to Bankruptcy Rule 4001, an interim hearing on the Motion for this Court to consider entry of the Interim Order, which, among other things, (i) authorized Borrower to obtain from the DIP Lender under the DIP Facility an amount up to the Interim Borrowing Amount on an interim basis; (ii) authorized the Debtor to effectuate the Prepetition Facility Advance Repayment with the proceeds of the Interim Borrowing and, upon entry of this Final Order, the Prepetition Facility Term Loan Repayment; (iii) authorized the Debtor’s use of the Cash Collateral; and (iv) granted the liens and claims provided for herein;

(x) ~~(x)~~ a final hearing on the Motion no later than thirty-six (36) days following the Petition Date (as defined herein) to consider entry of this Final Order granting the relief requested in the Motion on a final basis;

(xi) ~~(xi)~~ modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtor, the DIP Lender, the Prepetition Secured Lender, and the Senior Subordinated Noteholders to implement the terms of the Interim Order and this Final Order; and

(xii) ~~(xii)~~ waiver of any applicable stay (including under Bankruptcy Rule 6004) and provision for immediate effectiveness of the Interim Order and this Final Order.

This Court having held an interim hearing on October 3, 2013 (the “Interim-Hearing”) and a final hearing on November 7, 2013 (the “Final Hearing”) to consider the Motion and the relief requested therein; and after considering all of the pleadings filed with this Court; and after considering all of the evidence presented on the record at the Interim Hearing and the Final Hearing, and having overruled all unresolved objections to the relief requested in the Motion; having found that, under the circumstances, due and sufficient notice of the Motion, the Interim Hearing, entry of the Interim Order and the Final Hearing was provided by the Debtor in accordance with Bankruptcy Rules 2002, 4001(b), 4001(c), 4001(d), and 9014 and all applicable Local Rules as set forth in the Interim Order and in Paragraph ~~EE~~ below; and it appearing that approval of the relief requested in the Motion on a final basis is fair and reasonable and in the best interests of the Debtor, its estate, and all parties in interest, is a sound and prudent exercise of the Debtor’s business judgment, and is essential for the continued operation of the Debtor’s business and the preservation of the Debtor’s assets; and after due deliberation and consideration, and good and sufficient cause appearing therefore:

BASED ON THE RECORD MADE AT THE INTERIM AND FINAL HEARINGS, THE COURT FINDS AS FOLLOWS:

A. ~~A.~~ **Petition Date.** On October 1, 2013 (the “Petition Date”), the Debtor filed a voluntary petition with this Court commencing the Chapter 11 Case. The Debtor is continuing to operate its business and manage its property as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. ~~B.~~ **Jurisdiction; Venue.** This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief sought herein are sections 105, 361,

362, 363, 364, 503, 507, and 552 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001(b), and 9014 and Local Rule 4001-2. Venue of the Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. ~~C.~~ **Appointment of Committee.** On October 9, 2013, the Office of the United States Trustee for the Eastern District of Michigan (the “U.S. Trustee”) appointed a statutory committee of unsecured creditors (the “Committee”) in the Chapter 11 Case pursuant to section 1102(a) of the Bankruptcy Code. [Docket No. 69]

D. ~~D.~~ **Interim Order.** Based on the Motion, the record at the Interim Hearing, and all relevant pleadings filed with this Court, the Court approved the Debtor’s entry into and performance under the DIP Credit Agreement and the other DIP Loan Documents on an interim basis as well as other requested interim relief and entered on October 3, 2013, the *Interim Order on First Day Motion (I) Authorizing the Debtor to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c), 364(d)(1), and 3654(e) and (B) Utilize Cash Collateral of Prepetition Secured Entities Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c), and (IV) Granting Related Relief* (the “Interim Order”). [Docket No. 37]

E. ~~E.~~ **Notice.** The Final Hearing was held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtor, in accordance with the requirements of the Interim Order, to certain parties in interest, including: (a) the Office of the United States Trustee for the Eastern District of Michigan, (b) the 20 largest non-insider unsecured creditors of the Debtor on a consolidated basis, (c) Kirkland & Ellis LLP, as counsel to the Prepetition Secured Lender and

the DIP Lender, (d) holders of Senior Subordinated Notes, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, and (g) the United States Attorney for the Eastern District of Michigan. Under the circumstances, such notice of the Motion, the relief requested therein, and the Final Hearing complies with Bankruptcy Rule 4001(b), (c), and (d) and the Local Rules, and no further notice of the relief sought at the Final Hearing is necessary or required.

F. ~~F.~~ **Debtor's Stipulations With Respect to Prepetition Obligations.**

Subject to the limitations thereon described below in Paragraph ~~17~~17 the Debtor hereby admits, acknowledges, agrees, and stipulates that (collectively, the "Debtor's Stipulations"):

(i) ~~as~~ as of the Petition Date, the Debtor was truly and justly indebted to the Prepetition Secured Lender pursuant to the Prepetition Loan Documents, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than (i)(a) \$15,719,001.64 outstanding under the Advances (as defined in the Prepetition Credit Agreement), and (b) \$851,947.44 outstanding under the Term Loan (as defined in the Prepetition Credit Agreement), including the CapEx Purchase Loan Amount, *plus* (ii) ~~accrued~~ accrued and unpaid interest with respect thereto and any additional fees, costs, and expenses (including any attorneys', financial advisors', and other professionals' fees and expenses that are chargeable or reimbursable under the Prepetition Loan Documents) due under the Prepetition Loan Documents.

(ii) ~~as~~ as of the Petition Date, the Debtor was truly and justly indebted to the Senior Subordinated Noteholders pursuant to the Prepetition Senior Subordinated Note Documents, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than \$7,000,000 outstanding under the Senior Subordinated

Notes Agreement *plus* accrued and unpaid interest with respect thereto due under the Prepetition Senior Subordinated Note Documents.

All obligations of the Debtor arising under the Prepetition Loan Documents (including, without limitation, the “Obligations” as defined in the Prepetition Credit Agreement) and the Prepetition Senior Subordinated Note Documents shall collectively be referred to herein as the “Prepetition Obligations”;

(iii) the liens and security interests granted to the Prepetition Secured Lender (collectively, the “Prepetition First Priority Liens”) in substantially all of the Debtor’s assets (the “Prepetition Collateral”) as more particularly described in the Prepetition Collateral Documents are (i) valid, binding, perfected, and enforceable first priority liens and security interests in the real and personal property described in the Prepetition Collateral Documents;² (ii) not subject to, pursuant to the Bankruptcy Code or other applicable law, avoidance, disallowance, reduction, recharacterization, recovery, subordination, attachment, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) subject and subordinate only to (A) the Carve-Out (as defined below), (B) the DIP Liens (as defined below), and (C) Permitted Liens (as defined in the Prepetition Credit Agreement) to the extent permitted under the Prepetition Credit Agreement to be senior and to the extent perfected, and the Debtor irrevocably waives, for itself and its subsidiaries and affiliates, any right to challenge or

² Nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtor, the DIP Lender, the Prepetition Secured Lender, and the Committee (to the extent conferred standing) to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any such liens and/or security interests.

contest in any way the Prepetition First Priority Liens or the validity or enforceability under the Prepetition Obligations and the Prepetition Loan Documents;

(iv) ~~the~~ the liens and security interests granted to the Senior Subordinated Noteholders (collectively, the “Prepetition Second Priority Liens”) in the Prepetition Collateral, as more particularly described in the Prepetition Senior Subordinated Note Documents are (i) valid, binding, perfected, and enforceable second priority liens and security interests in the real and personal property described in the Prepetition Senior Subordinated Note Documents;³ (ii) not subject to, pursuant to the Bankruptcy Code or other applicable law, avoidance, disallowance, reduction, recharacterization, recovery, subordination, attachment, offset, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind; and (iii) subject and subordinate only to (A) the Carve-Out (as defined below), (B) the DIP Liens (as defined below), (C) the Prepetition First Priority Liens, and (D) Permitted Liens (as defined in the Prepetition Credit Agreement) to the extent permitted under the Prepetition Credit Agreement to be senior and to the extent perfected, and the Debtor irrevocably waives, for itself and its subsidiaries and affiliates, any right to challenge or contest in any way the Prepetition Second Priority Liens or the validity or enforceability of the Prepetition Obligations under the Prepetition Senior Subordinated Note Documents;

(v) ~~(a)~~ (a) the Prepetition Obligations constitute legal, valid, and binding Obligations of the Debtor; (b) no offsets, defenses, or counterclaims to the Prepetition

³ ~~Nothing~~ Nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtor, the DIP Lender, the Prepetition Secured Lender, and the Committee (to the extent conferred standing) to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any such liens and/or security interests.

Obligations exist; (c) no portion of the Prepetition Obligations is subject to avoidance, disallowance, reduction, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (d) the Prepetition Loan Documents are valid and enforceable by the Prepetition Secured Lender against the Debtor; (e) the Senior Subordinated Notes are valid and enforceable by the Senior Subordinated Noteholders against the Debtor; (f) the Prepetition Obligations constitute allowed claims against the Debtor's estate; and (g) no claim of or cause of action held by the Debtor or its estate exists against the Prepetition Secured Lender or the Senior Subordinated Noteholders, whether arising under applicable state or federal law (including, without limitation, any recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), or whether arising under or in connection with any of the Prepetition Loan Documents or the Prepetition Senior Subordinated Note Documents (or the respective transactions contemplated thereunder), Prepetition Obligations, Prepetition First Priority Liens, or Prepetition Second Priority Liens, including without limitation, any right to assert any disgorgement or recovery; and

(vi) all of the Debtor's cash, including any cash in the deposit accounts, wherever located, constitutes Cash Collateral of the Prepetition Secured Lender and the Senior Subordinated Noteholders.

G. ~~G.~~ Budget for DIP Facility. Attached hereto as Exhibit B is a cash flow forecast setting forth all projected cash receipts and cash disbursements (by line item) on a weekly basis (the "First Supplemental Approved Budget") for the ~~45~~13-week period beginning on ~~the Petition Date~~, October 25, 2013. The ~~First~~ Supplemental Approved Budget is required to be updated periodically and may be modified or supplemented from time to time by additional

budgets (covering any time period covered by a prior budget or covering additional time periods) prepared by the Debtor and approved by the DIP Lender, without subsequent notice to or order of the Court (the ~~First~~ Supplemental Approved Budget and each such subsequent budget (once approved by the DIP Lender), the “Approved Budget”), in accordance with the terms of the DIP Credit Agreement, provided that the Committee shall be promptly provided with a copy of any Approved Budget. The ~~First~~ Supplemental Approved Budget is an integral part of this Final Order and has been relied upon by the DIP Lender and the Prepetition Secured Lender in consenting to this Final Order, to provide the DIP Facility and to permit the use of the Cash Collateral. The Debtor represents and warrants to the DIP Lender, the Prepetition Secured Lender and this Court that the Approved Budget includes and contains the Debtor’s best estimate of all operational receipts and all operational disbursements, fees, costs, and other expenses that will be payable, incurred, and/or accrued by the Debtor during the period covered by the Approved Budget and that such operational disbursements, fees, costs, and other expenses will be timely paid in the ordinary course of business pursuant to and in accordance with the Approved Budget unless such operational disbursements, fees, costs, and other expenses are not incurred or otherwise payable. The Debtor further represents that the ~~First~~ Supplemental Approved Budget is achievable and will allow the Debtor to operate in the Chapter 11 Case and pay postpetition administrative expenses as they come due. In accordance with the DIP Credit Agreement, the Debtor shall be required to provide to the DIP Lender and the Committee a weekly report of actual cash receipts and disbursements on a consolidated basis (each, a “Weekly Actuals Report”) and a weekly variance report (the “Budget Variance Report”) comparing the actual cash receipts and disbursements and variances from the Approved Budget of the Debtor for the prior four-week period. The Debtor shall be permitted a variance between projected

receipts and actual receipts of fifteen (15) percent, and between projected disbursements and actual disbursements of fifteen (15) percent, on a line item basis for each four-week period.

H. ~~H.~~ Immediate Need for Funding. Based upon the pleadings and proceedings of record in the Chapter 11 Case, the Debtor does not have sufficient available sources of working capital and financing to carry on the operation of its business without the DIP Facility and authorized use of Cash Collateral. As a result of the Debtor's financial condition, the use of Cash Collateral alone will be insufficient to meet the Debtor's immediate postpetition liquidity needs. The Debtor's ability to maintain business relationships with its vendors, suppliers, and customers, pay its employees, purchase, and supply new inventory, and otherwise finance its operations is essential to the Debtor's continued viability. In the absence of the DIP Facility and the authority of this Court to use Cash Collateral, the Debtor's business and estate would suffer immediate and irreparable harm, including, without limitation, a cessation of substantially all of its operations. The preservation, maintenance, and enhancement of the going concern value of the Debtor are of the utmost significance and importance to a successful restructuring of the Debtor under chapter 11 of the Bankruptcy Code.

I. ~~I.~~ No Credit on More Favorable Terms. Based upon the pleadings and proceedings of record in the Chapter 11 Case, the Debtor is unable to obtain sufficient interim and long-term financing from sources other than the DIP Lender on terms and subject to conditions more favorable than under the DIP Facility and the DIP Loan Documents, and is not able to obtain adequate unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. The Debtor is also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP Credit Agreement without the Debtor (i) granting to the DIP Lender, subject to

the Carve-Out as provided herein, (x) the DIP Super-Priority Claims (as defined below) and (y) the DIP Liens in the DIP Collateral, as provided herein and in the DIP Loan Documents, (ii) agreeing to the Prepetition Facility Advance Repayment and, upon entry of a Final Order, the Prepetition Facility Term Loan Repayment, and (iii) providing the Prepetition Secured Lender the adequate protection as provided herein.

J. ~~J.~~ **Reasonable; Good Faith.** The DIP Lender has indicated a willingness to provide Borrower with post-petition secured financing but solely on the terms and conditions set forth in the Interim Order prior to the date of entry of this Final Order, and on the terms and conditions set forth in this Final Order thereafter and the DIP Loan Documents. After considering all of its alternatives, the Debtor has concluded, in an exercise of its sound business judgment, that the DIP Facility being provided by the DIP Lender and the authorization to use the Cash Collateral being provided by the Prepetition Secured Lender continues to represent the best financing presently available to the Debtor. Based upon the pleadings and proceedings of record in the Chapter 11 Case, (i) the terms and conditions of the DIP Facility and the continued use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Final Order and the DIP Loan Documents are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and constitute reasonably equivalent value and fair consideration, (ii) the DIP Facility has been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtor and the DIP Lender, and (iii) any credit extended, loans made, and other financial accommodations extended to the Debtor by the DIP Lender have been extended, issued, or made, as the case may be, by the DIP Lender in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. The Debtor has requested immediate entry of this Final Order pursuant to Bankruptcy Rules

4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief sought by this Final Order, the Debtor's estate will be immediately and irreparably harmed. Continued access to the DIP Facility and continued authorization of the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Final Order and the DIP Loan Documents continue to be in the best interests of the Debtor's estate and are consistent with the Debtor's fiduciary duties.

K. ~~K.~~ **Use of Cash Collateral.** A continuing need exists for the Debtor to use the Cash Collateral (in addition to the DIP Facility) to continue to operate its business, pay wages, maintain business relationship with vendors, suppliers, and customers, make capital expenditures, make adequate protection payments, and generally conduct its business affairs so as to avoid immediate and irreparable harm to its estate and the value of its assets.

L. ~~L.~~ **Consent by Prepetition Secured Lender.** The Prepetition Secured Lender has consented to, conditioned on the entry of this Final Order (i) the financing arrangements contemplated by the Interim Order, this Final Order, and the DIP Loan Documents and (ii) Debtor's proposed use of Cash Collateral, on the terms and conditions set forth in the Interim Order, this Final Order, and the DIP Credit Agreement.

M. ~~M.~~ **Adequate Protection.** The adequate protection provided to the Prepetition Secured Lender and to the Senior Subordinated Noteholders for any diminution in the value of the Prepetition Secured Lender's or the Senior Subordinated Noteholders' respective interests in the Prepetition Collateral from and after the Petition Date, including, without limitation, from the DIP Facility and use of the Cash Collateral, pursuant to the provisions of this Final Order, is consistent with and authorized by the Bankruptcy Code and is offered by the Debtor to protect the Prepetition Secured Lender's and the Senior Subordinated Noteholders' respective interests in the Prepetition Collateral in accordance with sections 361, 362, 363, and

364 of the Bankruptcy Code. The consent of the Prepetition Secured Lender to the priming of its liens by the DIP Liens does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition Secured Lender that its interests in the Prepetition Collateral are adequately protected pursuant to this Interim Order or otherwise. The adequate protection provided herein and other benefits and privileges contained herein are necessary in order to (i) protect the Prepetition Secured Lender and the Senior Subordinated Noteholders from the diminution in value of their respective interests in the Prepetition Collateral and (ii) obtain the foregoing consents and agreements.

N. ~~N.~~ **Good Cause Shown; Best Interest.** The Debtor has requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). This Court concludes that good cause has been shown and that entry of this Final Order is in the best interest of the Debtor's estate and creditors as its implementation will, among other things, allow for the continued operation of the Debtor's existing business and enhance the Debtor's prospects for a successful reorganization.

O. ~~O.~~ **No Liability to Third Parties.** The Debtor stipulates and the Court finds that in making decisions to advance loans to the Debtor, in administering any loans, in permitting the Debtor to use Cash Collateral, in accepting the ~~First~~ Supplemental Approved Budget or any future Supplemental Approved Budget, or in taking any other actions permitted by the Interim Order, this Final Order, or the DIP Loan Documents, the DIP Lender shall not be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor.

P. ~~P.~~ **Section 552.** In light of the subordination of its liens and super-priority administrative claims (i) in the case of the DIP Lender, to the Carve-Out and the Non-Primed

Liens and (ii) in the case of the Prepetition Secured Lender to the Carve-Out, the DIP Liens, and the Non-Primed Liens, the DIP Lender and Prepetition Secured Lender each are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception shall not apply.

Based on the foregoing, and upon the record made before this Court at the Final Hearing, and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. ~~1.~~ **Final Approval of the Motion.** The Motion is approved on a final basis on the terms and conditions set forth in this Final Order. Any objections that have not previously been withdrawn are hereby overruled. This Final Order shall become effective immediately upon its entry.

2. ~~2.~~ **Ratification of the Interim Order.** The Interim Order is hereby ratified and confirmed and all DIP Obligations incurred and borrowings and payments made and protections afforded to the DIP Lender and to any other party pursuant to the Interim Order are ratified and confirmed on a final basis and shall be deemed made in accordance with and pursuant to this Final Order.

3. ~~3.~~ **Approval of DIP Loan Documents; Authority Thereunder.** The DIP Loan Documents are hereby approved on a final basis. The Debtor’s execution and delivery hereby is confirmed on a final basis, and on such execution and delivery, the Debtor is directed to continue to perform all of its obligations under, the DIP Loan Documents, including the DIP Credit Agreement, which is approved on a final basis and incorporated herein by reference, and such additional documents, instruments, and agreements as may be required or requested by the DIP Lender pursuant to the DIP Credit Agreement to implement the terms or effectuate the

purposes of this Final Order. The Debtor is authorized to continue to comply with and continue to perform all of the terms and conditions contained therein, and directed to repay amounts borrowed, together with interest, fees (including, without limitation, the fees set forth in the DIP Credit Agreement) and premiums (as applicable) thereon and any other outstanding DIP Obligations to the DIP Lender in accordance with and subject to the terms and conditions set forth in the DIP Loan Documents and this Final Order. In the event of any inconsistency between the DIP Loan Documents and this Final Order, this Final Order shall control.

4. ~~4.~~ **Authorization to Borrow/Use Cash Collateral.** Pursuant to this Final Order, the DIP Credit Agreement, and the other DIP Loan Documents, (a) the Borrower is authorized on a final basis to borrow under the DIP Facility up to the maximum principal amount of \$27 million, and (b) the Borrower is authorized and directed on a final basis to cause the Prepetition Facility Advance Repayment to occur on a dollar-for-dollar basis from Cash Collateral received by the Borrower on account of accounts receivable that are paid following the entry of this Interim Order, in each case subject to the terms and conditions of this Final Order and the DIP Loan Documents. The Debtor is authorized on a final basis to use the proceeds of the DIP Facility and the Cash Collateral in the operation of the Debtor's business and to make the Prepetition Facility Advance Repayment, provided, that any proposed use of proceeds of the DIP Facility or use of Cash Collateral is consistent with the terms of the DIP Loan Documents, the Approved Budget, and this Final Order. Authorization to use Cash Collateral and any commitment to fund additional DIP Obligations under the DIP Facility will terminate pursuant to the terms of the DIP Credit Agreement or this Final Order. In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized on a final basis, and the automatic stay imposed by section 362 of the Bankruptcy Code is lifted, subject to Paragraph

2424 hereof, to the extent necessary, to perform all acts and to make, execute, and deliver all instruments and documents and to pay all fees that may be reasonably required or necessary for the Debtor's performance of its obligations under the DIP Loan Documents and this Final Order, including, without limitation:

a. ~~a.~~—The execution, delivery, and performance of the DIP Loan Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage contemplated thereby;

b. ~~b.~~—The execution, delivery, and performance of one or more amendments, waivers, consents, or other modifications to and under the DIP Loan Documents, it being understood that no further approval of the Court shall be required for amendments, waivers, consents, or other modifications to and under the DIP Loan Documents or the DIP Obligations; provided, however, that [any material modification or amendment shall require Court approval and](#) notice of any ~~such~~ modification or amendment to the DIP Loan Documents shall be provided to counsel to the Committee, to the U.S. Trustee, and to the Prepetition Secured Lender, each of whom shall have fourteen (14) days from the date of such notice within which to object in writing to such modification or amendment, subject to the Debtor's right to seek expedited relief and if the Committee or the U.S. Trustee timely objects to any modification or amendment to the DIP Loan Documents, such modification or amendment shall only be permitted pursuant to an order of this Court;

c. ~~e.~~—The non-refundable payment to the DIP Lender and the Prepetition Secured Lender of the fees and costs and expenses provided for under the DIP Loan Documents, the Prepetition Credit Agreement, and this Final Order, as may be due

from time to time, including, without limitation, fees and expenses of Kirkland & Ellis LLP and Pepper Hamilton LLP (together, the “Lenders’ Counsel”), as co-counsel to DIP Lender and the Prepetition Secured Lender (together, the “Lenders”), as provided for in the DIP Loan Documents, the Prepetition Credit Agreement, and this Final Order, which fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court; provided, however, that copies of any invoices (in summary form and redacted, as necessary, to protect any applicable privilege) with respect to such fees, costs, and expenses shall be provided to the U.S. Trustee and counsel to any Committee, and each such party shall have ~~ten~~ (10) ~~fourteen~~ (14) days from the date of such notice within which to object in writing to such payment;

d. ~~d.~~ Each borrowing under the DIP Facility up to the maximum principal amount in accordance with the terms hereof;

e. ~~e.~~ The making of the Prepetition Facility Term Loan Repayment;

f. ~~f.~~ The making of the adequate protection payments provided for in this Final Order; and

g. ~~g.~~ The performance of all other acts required under or in connection with the DIP Loan Documents.

5. ~~5.~~ **Termination Event.** The Debtor’s authority to use the proceeds of the DIP Facility or any Prepetition Collateral, including Cash Collateral, and any commitment to fund DIP Obligations under the DIP Facility, shall each terminate upon (unless, for each subpart of this Paragraph ~~5.5~~ 5.5, consented to by the DIP Lender) the earliest of (each a “Termination Event”):

a. ~~a.~~ 110 days following the Closing Date (as defined in the DIP Credit Agreement);

b. ~~b.~~ The date of acceleration of any outstanding borrowings under the DIP Facility pursuant to an Event of Default (as defined in the DIP Credit Agreement);

c. ~~c.~~ Conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code unless otherwise consented to in writing by the DIP Lender;

d. ~~d.~~ Dismissal of the Chapter 11 Case, unless otherwise consented to in writing by the DIP Lender;

e. ~~e.~~ The effective date of the Debtor's plan of reorganization confirmed in the Chapter 11 Case;

f. ~~f.~~ The occurrence of a Senior Lender Termination Event (as defined in any RSA).

6. ~~6.~~ **Perfection in Cash.** Subject to the Carve Out and other provisions of this Final Order, all financial institutions in which the Debtor's accounts are located are authorized and directed to comply with any request of the DIP Lender to turn over to the DIP Lender all funds therein without offset or deduction of any kind. The Debtor is directed to enter into such blocked account agreements with springing cash dominion with the DIP Lender and such financial institutions as the DIP Lender may require, or alternatively, the DIP Lender may enjoy the benefit of all control agreements to which the Prepetition Secured Lender is a party without the need to enter into new blocked account agreements.

7. ~~7.~~ **Interest on DIP Facility.** The rates of interest to be charged for DIP Obligations funded to the Debtor pursuant to the DIP Credit Agreement shall be the rates set

forth in the DIP Credit Agreement and shall be payable at the times set forth in the DIP Credit Agreement.

8. ~~8.~~ **Payment of DIP Fees and Expenses.** The Debtor is authorized and directed on a final basis to pay (i) all fees when due under the DIP Credit Agreement (including, without limitation, any fees provided for under the DIP Credit Agreement) in the amounts set forth in the DIP Credit Agreement and (ii) costs, expenses, and any other fees or other amounts payable under the terms of the DIP Loan Documents and all other reasonable, documented, out-of-pocket costs, and expenses of the DIP Lender in accordance with the terms of the DIP Loan Documents (including, without limitation, the reasonable, documented, out-of-pocket prepetition and postpetition fees, costs, and expenses of the Lenders' Counsel). None of such fees, costs, and expenses shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court. Copies of any invoices (in summary form and redacted, as necessary, to protect any applicable privilege) with respect to such fees, costs, and expenses shall be provided to the U.S. Trustee and counsel to the Committee, and each such party shall have ~~ten~~ (14) ~~fourteen~~ (14) days from the date of such notice within which to object in writing to such payment. In addition, the Debtor continues to be, and is hereby, authorized and directed, on a final basis, to indemnify the DIP Lender (and its affiliates, as well as each such parties' directors, officers, employees, agents, representatives, attorneys, consultants, advisors, and controlling persons) against any liability arising in connection with the DIP Loan Documents, to the extent set forth in the DIP Loan Documents; provided that the Debtor shall not have any obligation to indemnify or hold harmless any indemnified party with respect to any matter arising from the gross negligence or willful misconduct of such indemnified party, as determined by a court of

competent jurisdiction in a final non-appealable order. All such unpaid fees, costs, and expenses and indemnities of the DIP Lender shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under the Interim Order, this Final Order, and the DIP Loan Documents.

9. ~~9.~~ **Validity of DIP Loan Documents.** The DIP Loan Documents shall constitute, and are hereby deemed to be the legal, valid, and binding obligations of the Debtor, enforceable against the Debtor in accordance with the terms of the DIP Loan Documents and the terms of this Final Order for all purposes during the Chapter 11 Case, in any subsequently converted Chapter 11 Case of the Debtor under chapter 7 of the Bankruptcy Code or after dismissal of the Chapter 11 Case. Upon entry of this Final Order, proceeds of the DIP Facility shall be applied only to fund postpetition administrative expenses, the Debtor's working capital, the Prepetition Facility Term Loan Repayment, and to pay such other amounts as are required or permitted to be paid pursuant to the DIP Credit Agreement, the Interim Order, this Final Order, and any other orders of this Court, all subject to and in accordance with the Approved Budget. Except as set forth in this Final Order, no obligation, payment, transfer, or grant of security under the DIP Loan Documents, the Interim Order, or this Final Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-~~bankruptcy~~ law (including, without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim.

10. ~~10.~~ **DIP Super-Priority Claims.** In accordance with Bankruptcy Code sections 364(c)(1), the DIP Obligations shall constitute super-priority administrative expense

claims (the “DIP Super-Priority Claims”) against the Debtor with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtor, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113, and 1114 or otherwise, including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; provided, however, that the DIP Super-Priority Claims shall be subject to the Carve-Out (as defined below). The DIP Super-Priority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against the Debtor, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof (not including Avoidance Actions Proceeds or D&O Proceeds). Except as set forth in this Final Order, no other super-priority claims shall be granted or allowed in this Chapter 11 Case.

11. ~~11.~~ **DIP Liens.** As security for the DIP Obligations, the DIP Lender was granted pursuant to the Interim Order, the DIP Liens (as defined below). Pursuant to this Final Order, the grant of the DIP Liens to the DIP Lender is ratified on a final basis, which liens shall be subject and subordinate only to the Carve-Out, (without the necessity of the execution by the Debtor (or recordation or other filing), security agreements, lock box or control agreements, pledge agreements, financing statements, intellectual property filings, mortgages, any other similar instruments, or the possession and control by the DIP Lender of any property or

otherwise) valid, binding and fully perfected, security interests in, and liens upon (the “DIP Liens”) all present and after-acquired property of the Debtor of any nature whatsoever (including, without limitation, “Collateral” (as defined in the DIP Credit Agreement)), and all cash and cash equivalents contained in any account maintained by any of the Debtor (but not, for the avoidance of doubt, the Avoidance Actions (as defined herein), the Avoidance Actions Proceeds of the Debtor or its estate, the D&O Actions (as defined herein) or the D&O Proceeds of the Debtor or its estate) (collectively, with all proceeds and products of any or all of the foregoing, the “DIP Collateral” and, together with the Prepetition Collateral, the “Collateral”), such DIP Liens to consist of:

a. ~~a.~~ First Lien on Cash Balances and Unencumbered Property.

Pursuant to section 364(c)(2) of the Bankruptcy Code, a continuing, enforceable, first priority, fully-perfected lien and security interest upon all of the Debtor’s right, title, and interest in, to and under all DIP Collateral that is not otherwise encumbered by a validly perfected security interest or lien on the Petition Date (collectively, the “Unencumbered Property”); provided, however, that Unencumbered Property shall not include (i) the Debtor’s claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy Code (collectively, “Avoidance Actions”), (ii) any proceeds of the Avoidance Actions or property received thereby (collectively, the “Avoidance Actions Proceeds”), (iii) the Debtor’s claims and causes of action (collectively, the “D&O Actions”) under its directors and officers insurance policies (collectively, the “D&O Policies”), or (iv) any proceeds of the D&O Actions or property received thereby (collectively, the “D&O Proceeds”).

b. ~~b.~~ Liens Priming the Prepetition Secured Lender's Liens.

Pursuant to section 364(d)(1) of the Bankruptcy Code, a first priority, senior, priming, perfected lien and security interest upon all of the Debtor's right, title, and interest in, to and under all DIP Collateral that is subject to any existing lien presently securing the Prepetition Obligations, subject only to Non-Primed Liens (as defined below). Such security interest shall be senior to and prime the security interests and liens of the Prepetition Secured Lender on account of the Prepetition Obligations and the Adequate Protection Liens (as defined below) granted to the Prepetition Secured Lender, but shall be junior to any Non-Primed Liens on such property.

c. ~~c.~~ Liens Junior to Certain Other Liens. Pursuant to section

364(c)(3) of the Bankruptcy Code, a junior, perfected lien and security interest (other than as set forth in clause (d) below) upon all of the Debtor's right, title, and interest in, to and under all DIP Collateral (other than the property described in clause (a) or (b) of this Paragraph ~~11~~¹¹, as to which liens and security interests in favor of the DIP Lender will be as described in such clauses), whether now existing or hereafter acquired, that is subject to (A) any validly perfected security interest or lien in existence as of the Petition Date that is not subject to section 552(a) of the Bankruptcy Code, or (B) any valid security interest or lien perfected (but not granted) after the Petition Date (to the extent such perfection in respect of a pre-Petition Date claim is expressly permitted under the Bankruptcy Code) that is not subject to section 552(a) of the Bankruptcy Code, in each case that is senior in priority to the Prepetition First Priority Liens (the "Non-Primed Liens").

d. ~~d.~~ Liens Senior to Certain Other Liens. The DIP Liens and the Adequate Protection Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtor, or (iii) any intercompany or affiliate liens of the Debtor.

12. ~~12.~~ Prepetition Secured Lender Adequate Protection. Until the indefeasible repayment of the Prepetition Obligations, the Prepetition Secured Lender is entitled pursuant to sections 361, 363(c), and 364(d)(1) of the Bankruptcy Code to adequate protection of its interest in the Prepetition Collateral for and equal in amount to the aggregate diminution in the value thereof as a result of (a) the provisions of this Final Order granting first priority and/or priming liens on such Prepetition Collateral to the DIP Agent for the benefit of the DIP Lender; (b) authorizing the use of Cash Collateral; (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code; or (d) otherwise, pursuant to sections 361(a), 363(c), and 364(d)(1) of the Bankruptcy Code. The Prepetition Secured Lender was granted by the Interim Order and is hereby granted on a final basis, solely to the extent of the diminution in value of the Prepetition First Priority Liens in the Prepetition Collateral from and after the Petition Date, the following (collectively, the “Prepetition Adequate Protection Obligations”):

a. ~~a.~~ Adequate Protection Liens. The Prepetition Secured Lender was granted, pursuant to the Interim Order, valid, enforceable, unavoidable, and fully perfected replacement liens and security interests in all Collateral (but not, for the avoidance of doubt, the Avoidance Actions, Avoidance Actions Proceeds, D&O Actions,

or D&O Proceeds), to the extent of any diminution in the Prepetition Secured Lender's interest in the Prepetition Collateral, which shall be junior to the DIP Liens and Non-Primed Liens and subject and subordinate to the Carve-Out (the "Prepetition Adequate Protection Liens"). Pursuant to this Final Order, the grant of Prepetition Adequate Protection Liens to the Prepetition Secured Lender is ratified on a final basis, which liens shall be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Case. Except as otherwise set forth in this Paragraph ~~12~~12 or otherwise in this Final Order, the Prepetition Adequate Protection Liens shall not be subordinated or be made *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise. The Prepetition Adequate Protection Liens were deemed to have been perfected automatically upon the entry of the Interim Order and continue to be perfected, without the necessity of filing of any UCC-1 financing statement, state or federal notice, mortgage or other similar instrument or document in any state or public record or office and without the necessity of taking possession or control of any collateral.

b. ~~b.~~ Super-Priority Claims. The Prepetition Secured Lender was granted, pursuant to the Interim Order, super-priority administrative expense claims (the "Prepetition Super-Priority Claims") under sections 503 and 507 of the Bankruptcy Code against the Debtor's estate, ~~including, subject to and upon entry~~ (but not, for the avoidance of this Final Order doubt, Avoidance Actions Proceeds, or D&O Proceeds) to the extent that the Adequate Protection Liens do not adequately protect against the diminution in value of the Prepetition Collateral, which Prepetition Super-Priority Claims, if any, shall have priority in payment over any and all administrative expenses of

the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, and 1114, or otherwise and including those resulting from the conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code; provided that at all times while such claim is in full force and effect pursuant to this Final Order, the Prepetition Super-Priority Claims shall be junior in all respects to the DIP Super-Priority Claims and the Carve-Out.

c. ~~e.~~ Fees and Expenses. The Prepetition Secured Lender is hereby granted and shall receive payments in cash from the Debtor on a current basis of all fees, costs, and expenses payable to the Prepetition Secured Lender under the Prepetition Credit Agreement as in effect on the Petition Date (the “Prepetition Secured Professional Fee Payments”), including but not limited to, the reasonable fees and disbursements of the Lenders’ Counsel, promptly upon receipt of written invoices therefor (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing motions or fee applications, including such amounts arising (A) before the Petition Date and (B) after the Petition Date to the extent such amounts arise in connection with the Chapter 11 Case; provided, however, that none of such fees, costs, and expenses shall be subject to Court approval or U.S. Trustee guidelines, and the Prepetition Secured Lender shall not be required to file with respect thereto any interim or final fee application with this Court; provided further, however, that copies of any invoices (in summary form and redacted, as necessary, to protect any applicable privilege) with respect to such fees, costs, and expenses shall be provided to the U.S. Trustee, counsel to the Committee, and the Prepetition Secured Lender, and each such party shall have

fourteen (14) days from the date of such notice within which to object in writing to such payment; provided, however, that if the Prepetition Secured Lender is determined by final order to be undersecured, such Prepetition Secured Professional Fee Payments shall be applied to outstanding obligations under the Prepetition Credit Agreement.

d. ~~d.~~ Interest. The Prepetition Secured Lender is hereby granted on a final basis and shall receive (a) payments in cash from the Debtor on a current basis of all accrued and unpaid interest and fees at the non-default contract rate owing under the Prepetition Credit Agreement immediately prior to the Petition Date, and (b) current monthly payments of postpetition interest (at the Base Rate plus the Applicable Margin) (each term as defined in the Prepetition Credit Agreement)) when due and payable under the Prepetition Credit Agreement (together, the “Prepetition Adequate Protection Interest Payments”); ~~;~~ provided, however, that if the Prepetition Secured Lender is determined by final order to be undersecured, such Prepetition Adequate Protection Interest Payments shall be applied to outstanding obligations under the Prepetition Credit Agreement.

e. ~~e.~~ Financial Reporting. The Debtor shall provide the Prepetition Secured Lender and the Committee with the financial and other reporting as described in the DIP Credit Agreement (the “Periodic Reporting Materials”).

f. ~~f.~~ Right to Seek Additional Adequate Protection. This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Lender to request additional forms of adequate protection at any time or the rights of the Debtor or any other party to contest such request; provided, however, that any such further or different adequate protection shall at

all times be subordinate and junior to the claims and liens of the DIP Lender granted under this Order and the DIP Loan Documents.

13. ~~13.~~ **Senior Subordinated Noteholder Adequate Protection.** Senior Subordinated Noteholders shall (x) receive the Periodic Reporting Materials, and (y) be granted on a final basis valid, enforceable, unavoidable, and fully perfected replacement liens and security interests in all Collateral solely to the extent of any diminution in the value of the Subordinated Noteholders' interests in the Prepetition Collateral (the "Senior Subordinated Noteholder Adequate Protection Liens"), subordinate to the Carve-Out, the DIP Liens, and the Prepetition Adequate Protection Liens. The Senior Subordinated Noteholder Adequate Protection Liens were deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes in the Chapter 11 Case. Subject to section 510(a) of the Bankruptcy Code and any subordination agreement by and among the Prepetition Secured Lender and the Senior Subordinated Noteholders, the Senior Subordinated Noteholder Adequate Protection Liens shall be *pari passu* with any other lien under section 364(d) of the Bankruptcy Code or otherwise. The Senior Subordinated Noteholder Adequate Protection Liens were deemed to have been perfected automatically upon the entry of the Interim Order and continue to be perfected, without the necessity of filing of any UCC-1 financing statement, state or federal notice, mortgage or other similar instrument or document in any state or public record or office and without the necessity of taking possession or control of any collateral.

14. ~~14.~~ **No Waiver of Prepetition Credit Agreement Provisions; Reservation of Rights.** Except as otherwise specifically provided in this Final Order, nothing contained in this Final Order shall be deemed a waiver or constitute a consent to the modification of any provision contained in the Prepetition Credit Agreements by the Prepetition Secured

Lender, including, but not limited to, the incurrence or issuance of any indebtedness by the Debtor, the incurrence of any lien in connection therewith or the making of any payment by the Debtor.

15. ~~15.~~ Carve-Out. To the extent unencumbered funds are not immediately available to pay administrative expenses in full, the DIP Liens, DIP Super-Priority Claims, Prepetition Super-Priority Claims, Adequate Protection Liens, and all liens, claims, and other security interests ("Prepetition Liens") held by any party, including the DIP Lender, the Prepetition Secured Lender and the Senior Subordinated Noteholder on account of any obligations, including the Prepetition Obligations, shall each be subject to the "Carve-Out," which shall be defined as the sum of: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § ~~1~~1930 plus interest at the statutory rate (without regard to the notice set forth in clause (iii) below); (ii) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iii) below); (iii) to the extent allowed or authorized by the Bankruptcy Court to be paid at any time, whether by interim order, procedural order, or otherwise, all accrued and unpaid fees and expenses (the "Professional Fees") of persons or firms retained by the Debtor pursuant to section 327, 328, or 363 of the Bankruptcy Code and the Committee (collectively, "Professionals") incurred at any time before or on the first Business Day (as defined in the DIP Credit Agreement) following delivery by the DIP Lender to the Debtor, its counsel, the U.S. Trustee, and lead counsel to the Committee of a written notice, which may be delivered following the occurrence and during the continuance of an Event of Default under the DIP Facility, seeking relief from the automatic stay to foreclose upon the DIP Collateral (a "Carve-Out Trigger Notice"), whether allowed by the Bankruptcy

Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) Professional Fees incurred after the first Business Day following delivery by the DIP Lender of the Carve Out Trigger Notice, to the extent allowed or authorized by the Bankruptcy Court to be paid at any time, whether by interim order, procedural order, or otherwise, in an aggregate amount not to exceed \$400,000; provided, however, that no portion of the Carve-Out, proceeds of the DIP Facility, DIP Collateral, Prepetition Collateral, or Cash Collateral shall include, apply to, or be available for any fees, costs, or expenses incurred by any party, including the Debtor or the Committee or any Professionals engaged thereby, in connection with (x) the initiation or prosecution of any claims, causes of action, adversary proceedings, or other litigation against any of the DIP Lender or the Prepetition Secured Lender, including, without limitation, (a) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Obligations, DIP Super-Priority Claims or DIP Liens, (b) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Prepetition Obligations, Prepetition Super-Priority Claims or Prepetition Liens or (y) asserting any claims or causes of action, including, without limitation, claims or actions to hinder or delay the DIP Lender's assertion, enforcement, or realization on the DIP Collateral in accordance with the DIP Loan Documents, the Interim Order, or this Final Order. Nothing contained herein is intended to constitute, nor should be construed as consent by any party to, the allowance of any Professional's fees, costs, or expenses and shall not affect the right or ability of any party in interest to object to the allowance and payment of any fees, expenses, reimbursement, or compensation described in clauses (ii), (iii), and (iv) above. The aggregate amount set forth under clauses (i), (ii), (iii) and (iv) above from time to time shall be referred to as the "Carve-Out Cap."

16. ~~16.~~ **Financial Reporting to the Committee.** The Debtor shall provide the Committee with the financial and other reporting required by the DIP Credit Agreement to be provided to the DIP Lender, subject to the members of the Committee entering into non-disclosure arrangements acceptable to the Debtor.

17. ~~17.~~ **Investigation Rights.** The Committee shall have until November 23, 2013 (the "Investigation Termination Date") to investigate the validity, perfection, and enforceability of the Prepetition Liens and the Prepetition Obligations, or to assert any other claims or causes of action against the Prepetition Secured Lender. If the Committee or any non-debtor party-in-interest, subject to having obtained the requisite standing, determines that there may be a challenge to the Prepetition Secured Lender by the Investigation Termination Date, then upon three (3) days' written notice to the Debtor and the Prepetition Secured Lender, such Committee shall be permitted to file and prosecute an objection or claim related thereto (each, a "Challenge"), and shall have only until the applicable Investigation Termination Date to file such objection or otherwise initiate an appropriate action on behalf of the Debtor's estate setting forth the basis of any such challenge, claim, or cause of action; provided, however, that nothing contained in the DIP Loan Documents, the Interim Order, or this Final Order shall be deemed to confer standing on the Committee or any other party in interest to commence a Challenge. If a Challenge is not filed on or before the Investigation Termination Date, then, without further action by any party or any further order of this Court: ~~(a)~~ the agreements, acknowledgements, and stipulations contained in Paragraph FF of this Final Order, shall be deemed to be immediately and irrevocably binding on the Debtor and the Debtor's estate, the Committee, all parties-in-interest and any and all successors-in-interest as to any of the foregoing, and the Committee and any other party-in-interest and any and all successors-in-interest thereto, shall

thereafter be forever barred from bringing any Challenge; (b) ~~the~~ the liens and security interests of the Prepetition Secured Lender and the Senior Subordinated Noteholders shall be deemed to constitute valid, binding, enforceable, and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (c) the Prepetition Obligations shall be deemed to be finally allowed claims for all purposes in the Chapter 11 Case and any subsequent chapter 7 case, in the amounts set forth in Paragraph FF and shall not be subject to challenge by any party-in-interest as to validity, priority, or otherwise; and (d) the Debtor shall be deemed to have released, waived, and discharged the Prepetition Secured Lender (whether in its prepetition or postpetition capacity), together with its respective officers, directors, employees, agents, attorneys, professionals, affiliates, subsidiaries, assigns, and/or successors, from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Prepetition Obligations or their prepetition relationship with such Debtor or any affiliate thereof relating to any of the Prepetition Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses as to the extent, validity, priority, or enforceability of the Prepetition Liens or the Prepetition Obligations, any claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action. Notwithstanding anything to the contrary herein: (a) if any such Challenge is timely commenced, the stipulations contained in Paragraph FF of this Final Order shall nonetheless remain binding on all parties-in-interest and preclusive except to the extent that such stipulations are expressly and successfully challenged in such Challenge; and (b) the Prepetition Secured Lender reserves all of its rights to contest on any grounds any Challenge. For the avoidance of doubt, any trustee appointed or elected in this case shall, until the Investigation Termination Date (and thereafter, if a Challenge is commenced by the Investigation Termination Date) for the duration of any

adversary proceeding or contested matter commenced pursuant to this paragraph with respect to a Challenge (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor's estate), be deemed to be a party other than the Debtor and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, and stipulations of the Debtor in this Order.

18. ~~18.~~ **Protection of DIP Lender's Rights.** So long as there are any amounts outstanding under the DIP Credit Agreement or any other DIP Obligations are outstanding, the Prepetition Secured Lender (i) shall not take any action to foreclose upon or recover in connection with its liens and security interests, other agreements, or operation of law of this Final Order, or otherwise exercise remedies against any DIP Collateral, except to the extent authorized herein or by any other order of this Court, (ii) shall be deemed to have consented to any release of DIP Collateral authorized under the DIP Loan Documents, (iii) shall not file any further financing statements, trademark filings, copyright filings, patent filings, mortgages, notices of lien or similar instruments, enter into any control agreement, or otherwise take any action to perfect its security interest in the DIP Collateral unless, solely as to this clause (iii), the DIP Lender files financing statements or other documents to perfect the liens granted pursuant to the Interim Order, this Final Order, or the DIP Loan Documents, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests as of the Petition Date, and (iv) not seek to terminate or modify the use of Cash Collateral.

19. ~~19.~~ **Dispositions of Collateral.** In the event of any sale, lease, or other disposition of any DIP Collateral (a "Collateral Disposition"), the Debtor shall, as a condition to approval of such Collateral Disposition, to the extent required by the DIP Credit Agreement,

immediately pay, or cause to be paid to, the DIP Lender all of the proceeds of such Collateral Disposition for application to the DIP Obligations and shall comply with all other provisions in the DIP Loan Documents and this Final Order in connection with any such Collateral Disposition. All such proceeds of any Collateral Disposition shall be applied in accordance with the terms and conditions of the DIP Credit Agreement.

20. ~~20.~~ Further Assurances. The Debtor shall execute and deliver to the DIP Lender and the Prepetition Secured Lender and the Senior Subordinated Noteholders, all such agreements, financing statements, instruments, and other documents as the Lenders may reasonably request to evidence, confirm, validate, or evidence the perfection of the DIP Liens or the Adequate Protection Liens granted pursuant hereto. Further, the Debtor is authorized and directed to do and perform all acts, to make, execute, and deliver all instruments and documents (including, without limitation, the execution of additional security agreements, pledge agreements, control agreements, mortgages, and financing statements), and shall pay fees and expenses that may be required or necessary for the Debtor's performance under the DIP Loan Documents, including, without limitation, (i) the execution of the DIP Loan Documents and (ii) the payment of the fees, costs, and other expenses described in the DIP Loan Documents as such become due.

21. ~~21.~~ 506(c) Waiver. Except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Prepetition Collateral, or the Cash Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law without the prior written consent of the DIP Lender or the Prepetition Secured Lender, and

no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender or the Prepetition Secured Lender.

22. ~~22.~~ **Restrictions on Granting Post-Petition Liens.** Other than the Carve~~—~~Out, or as otherwise provided in this Final Order or the DIP Credit Agreement, no claim having a priority superior or *pari passu* with those granted by the Interim Order or this Final Order to the DIP Lender and the Prepetition Secured Lender shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Case, while any portion of the DIP Facility (or refinancing thereof), any DIP Loan, or any other DIP Obligations are outstanding. Except as expressly permitted by this Final Order and the DIP Loan Documents, the Debtor will not, at any time during the Chapter 11 Case, grant mortgages, security interests, or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to section 364(d) of the Bankruptcy Code or otherwise. Unless all DIP Obligations shall have indefeasibly been paid in full in cash (or as otherwise provided in this Final Order and the DIP Loan Documents), and the Adequate Protection Obligations shall have been indefeasibly paid in cash in full, the Debtor shall not seek, and it shall constitute an Event of Default (as defined in the DIP Credit Agreement) and terminate the right of the Debtor to use Cash Collateral under this Final Order if the Debtor seeks, or if there is entered, (i) any modification of this Final Order without the prior written consent of the DIP Lender (or, to the extent the DIP Obligations shall have been indefeasibly paid in full in cash (or otherwise fully satisfied as provided in this Final Order and the DIP Loan Documents), the Prepetition Secured Lender), and no such consent shall be implied by any other action, inaction, or acquiescence, or (ii) an order converting or dismissing the Chapter 11 Case.

23. ~~23.~~ **Automatic Effectiveness of Liens.** The DIP Liens and Adequate Protection Liens shall not be subject to challenge and shall attach and become valid, perfected, enforceable, non-avoidable, and effective by operation of law as of the Petition Date, having the priority set forth in Paragraphs ~~11 and 12~~ 11 and 12 of this Final Order, without any further action by the Debtor, the DIP Lender or the Prepetition Secured Lender and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office or the Library of Congress, or other documents or the taking of any other actions. All DIP Collateral shall be free and clear of other liens, claims, and encumbrances, except as permitted in the DIP Loan Documents and this Final Order. If the DIP Lender or the Prepetition Secured Lender hereafter request that the Debtor execute and deliver to the DIP Lender or the Prepetition Secured Lender financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens or the Adequate Protection Liens, as applicable, the Debtor is hereby directed to execute and deliver such financing statements, security agreements, mortgages, collateral assignments, instruments, and documents, and the DIP Lender and the Prepetition Secured Lender are hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Interim Order.

24. ~~24.~~ **Automatic Stay.** As provided herein, subject only to the provisions of the DIP Credit Agreement and without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent

necessary to permit the DIP Lender to exercise, upon the occurrence and during the continuance of any Event of Default (as defined in the DIP Credit Agreement), all rights and remedies provided for in the DIP Loan Documents, and to take any or all of the following actions, so long as the DIP Lender has provided ~~three (3)~~five (5) business days prior written notice to the Debtor, its bankruptcy counsel, counsel to any Committee, counsel to the Prepetition Secured Lender, and the U.S. Trustee: (a) immediately terminate the Debtor's authority to use Cash Collateral and cease making any advances or issuing any letters of credit under the DIP Facility, and cease authorizing the use thereof; (b) declare all DIP Obligations to be immediately due and payable; (c) charge the default rate of interest provided for under the DIP Credit Agreement; (d) exercise rights on monies or balances in the Debtor's accounts; (e) enforce rights against the DIP Collateral in the possession or control of the DIP Lender for application towards the DIP Obligations, including, as applicable, pursuant to each of the Collateral Access Agreements (as defined in the Prepetition Credit Agreement) provided under the Prepetition Loan Documents, which pursuant hereto the DIP Lender shall be deemed to be a successor and assign capable of enforcing all rights thereunder in respect to the DIP Obligations; and (f) take any other actions or exercise any other rights or remedies permitted under this Final Order, the DIP Loan Documents, or applicable law to effect the repayment of the DIP Obligations. Following the giving of written notice by the DIP Lender of the occurrence of an Event of Default, the Debtor and the Committee shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether an Event of Default has occurred; provided, however, that the Court may consider these arguments or any other pertinent matters. The Debtor shall not have the right to contest the enforcement of the remedies set forth in the Interim Order, this Final Order, and the DIP Loan Documents on any basis other than an assertion that no Event of Default has occurred,

and, except with respect to such an assertion, no party-in-interest shall have the right to enjoin any such enforcement under section 105 of the Bankruptcy Code or otherwise, or to seek any injunctive relief inconsistent with the provisions of the Interim Order, this Final Order, or the DIP Loan Documents. The rights and remedies of the DIP Lender specified herein are cumulative and not exclusive of any rights or remedies that the DIP Lender may have under the DIP Loan Documents or otherwise. The Debtor shall cooperate fully with the DIP Lender in its exercise of rights and remedies against the DIP Collateral. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Paragraph 2424 and relating to the application, re-imposition or continuance of the automatic stay as provided hereunder.

25. ~~25.~~ Credit Bid.

a. ~~a.~~ The DIP Lender shall have the unqualified right to credit bid up to the full amount of the outstanding DIP Obligations in any sale of any DIP Collateral under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

b. ~~b.~~ The Prepetition Secured Lender shall have the unqualified right to credit bid up to the full amount of any remaining Prepetition Obligations in the sale of any Prepetition Collateral subject to the satisfaction of the DIP Obligations, or as otherwise consented to by the DIP Lender under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129

of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

26. ~~26.~~ **Binding Effect.** Subject to Paragraph ~~17,~~ 17, the provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lender, the Prepetition Secured Lender, the Debtor, the Committee, and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereafter appointed or elected for the estate of the Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor). To the extent permitted by applicable law, this Final Order shall bind any trustee hereafter appointed for the estate of the Debtor, whether in this Chapter 11 Case or in the event of the conversion of the Chapter 11 Case to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Final Order.

27. ~~27.~~ **Survival.** The provisions of this Final Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of reorganization in the Chapter 11 Case (and, to the extent not satisfied in full in cash, the DIP Obligations shall not be discharged by the entry of any such order, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor having hereby waived such discharge), (ii) converting the Chapter 11 Case to a chapter 7 case, or (iii) dismissing the Chapter 11 Case, and the terms and provisions of this Final Order as well as the DIP Super-Priority Claims and the DIP Liens in the DIP Collateral granted pursuant to the Interim Order, this Final Order, and the DIP Loan Documents (and with respect to the entry of any order as set forth in (ii) or (iii) herein, the Adequate Protection Liens and Prepetition Super-Priority Claims) shall continue in full force and effect notwithstanding the entry of any such order. Such claims and liens shall maintain their priority as provided by the

Interim Order, this Final Order, and the DIP Loan Documents, and to the maximum extent permitted by law, until all of the DIP Obligations are indefeasibly paid in full and discharged. In no event shall any plan of reorganization be allowed to alter the terms of repayment of any of the DIP Obligations from those set forth in the DIP Loan Documents.

28. ~~28.—Reallocation.~~ For the avoidance of doubt, in the event that it is determined by this Court after a successful Challenge, if any, by the Committee that the Prepetition Secured Lender did not maintain valid, perfected, and enforceable liens on the Prepetition Collateral, the Bankruptcy Court, after notice and hearing, reserves the right to unwind, and reallocate any payments, or any portion thereof (which could include the disgorgement, recharacterization, or reallocation of interest, fees, principal, and/or other incremental consideration paid in respect thereto) made to the Prepetition Secured Lender, including the Prepetition Facility Advance Repayment, and modify any liens and claims granted pursuant to the Interim Order or this Final Order, including the grant of adequate protection to the Prepetition Secured Lender.

29. ~~29.—Insurance Policies.~~ The DIP Lender shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtor which in any way relates to the DIP Collateral (but not, for the avoidance of doubt, the D&O Policies). The Debtor is authorized and directed to take any actions necessary to have the DIP Lender be added as an additional insured and loss payee on each insurance policy, except for the D&O Policies.

30. ~~30.—Restriction on Use of DIP Lender's Funds.~~ The Debtor shall not be permitted to use the proceeds of the DIP Facility: (a) for the payment of interest and principal with respect to any indebtedness that is subordinated to the DIP Facility except as expressly set

forth herein and permitted pursuant to the terms of the DIP Credit Agreement, (b)- to finance in any way any adversary action, suit, arbitration, proceeding, application, motion, other litigation, examination, or investigation of any type relating to or in connection with the DIP Loan Documents, including, without limitation, any challenges to the Prepetition Obligations, or the validity, perfection, priority, or enforceability of any Prepetition Lien securing such claims or any payment made thereunder, ~~(e)-~~ (except that proceeds of the DIP Facility will be available to pay the Committee's reasonable and documented fees and expenses incurred in investigating the Prepetition Obligations in advance of the Investigation Termination Date), (c) to finance in any way any action, suit, arbitration, proceeding, application, motion, other litigation, examination, or investigation of any type adverse to the interests of the DIP Lender or its rights and remedies under the DIP Credit Agreement, the other DIP Loan Documents, the Interim Order, or this Final Order without the prior written consent of the DIP Lender, (d)- to make any distribution under a plan of reorganization in any Chapter 11 Case, and (e)- to make any payment in settlement of any material claim, action, or proceeding, before any court, arbitrator, or other governmental body without the prior written consent of the DIP Lender. Notwithstanding anything herein to the contrary, for so long as the Debtor is authorized to use the Prepetition Secured Lender's Cash Collateral with the consent of the Prepetition Secured Lender, no Cash Collateral of the Prepetition Secured Lender may be used directly or indirectly by the Debtor, the Committee, or any other person or entity to object to or contest in any manner the Prepetition Obligations or Prepetition Liens, or to assert or prosecute any actions, claims, or causes of action against the Prepetition Secured Lender without the consent of the Prepetition Secured Lender.

31. ~~31.-~~ **Release of Claims and Defenses.** The Debtor hereby releases and discharges the DIP Lender and its affiliates, together with their respective agents, attorneys,

advisors, officers, directors, and employees (collectively, the “Released Parties”), from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, any of the loans under the DIP Facility or the DIP Loan Documents, any aspect of the relationship between the Debtor, on the one hand, and any or all of the Released Parties, on the other hand, relating to any of DIP Loan Documents or any transaction contemplated thereby or any other acts or omissions by any or all of the Released Parties in connection with any of the DIP Loan Documents or their prepetition relationship with the Debtor or any affiliate thereof relating to any of the DIP Loan Documents or any transaction contemplated thereby, including, without limitation, any claims or defenses under chapter 5 of the Bankruptcy Code or any other causes of action (collectively, the “Claims and Defenses”).

32. ~~32.~~ **Protection Under Section 364(e).** If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated, or stayed, such reversal, modification, vacation, or stay shall not affect the (i) validity of any DIP Obligations or Adequate Protection Obligations owing to the DIP Lender or the Prepetition Secured Lender incurred prior to the actual receipt by the DIP Lender or the Prepetition Secured Lender, as applicable, of written notice of the effective date of such reversal, modification, vacation, or stay, or (ii) validity or enforceability of any claim, lien, security interest, or priority authorized or created hereby or pursuant to the Interim Order or the DIP Loan Documents with respect to any DIP Obligations or Adequate Protection Obligations owing to the Prepetition Secured Lender. Notwithstanding any such reversal, modification, vacation, or stay, any use of Cash Collateral or the incurrence of DIP Obligations, or Adequate Protection Obligations owing to the Prepetition Secured Lender, by the Debtor prior to the actual receipt by the DIP Lender or the Prepetition Secured Lender, as applicable, of written notice of the effective date of such reversal, modification, vacation, or stay,

shall be governed in all respects by the provisions of the Interim Order, this Final Order, and the Prepetition Secured Lender shall be entitled to all of the rights, remedies, protections, and benefits granted under section 364(e) of the Bankruptcy Code, the Interim Order, this Final Order, and the DIP Loan Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations, and Adequate Protection Obligations owing to the Prepetition Secured Lender.

33. ~~33.~~ **Effect of Dismissal of Chapter 11 Case.** If the Chapter 11 Case is dismissed, converted, or substantively consolidated, such dismissal, conversion, or substantive consolidation of the Chapter 11 Case shall not affect the rights of the DIP Lender or the Prepetition Secured Lender under their respective DIP Loan Documents, Prepetition Loan Documents, the Interim Order, or this Final Order, and all of the respective rights and remedies thereunder of the DIP Lender and Prepetition Secured Lender shall remain in full force and effect as if the Chapter ~~11~~ Case had not been dismissed, converted, or substantively consolidated. If an order dismissing the Chapter 11 Case is at any time entered, such order shall provide (in accordance with Sections 105 and 349 of the Bankruptcy Code) that: (i) the DIP Liens and DIP Super-Priority Claims granted to and conferred upon the DIP Lender and the protections afforded to the DIP Lender pursuant to the Interim Order, this Final Order, and the DIP Loan Documents shall continue in full force and effect and shall maintain their priorities as provided in the Interim Order and this Final Order until all DIP Obligations shall have been paid and satisfied in full (and that such DIP Liens, DIP Super-Priority Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); (ii) those primed or unprimed (as the case may be) Prepetition Liens, Adequate Protection Liens, and Prepetition Super-Priority Claims granted to and conferred upon the Prepetition Secured Lender shall

continue in full force and effect and shall maintain their priorities as provided in the Interim Order and this Final Order until all Prepetition Indebtedness shall have been paid and satisfied in full (and that such Prepetition Super-Priority Claims shall, notwithstanding such dismissal, remain binding on all interested parties); and (iii) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, Prepetition Liens, Adequate Protection Liens, DIP Super-Priority Claims, and Prepetition Super-Priority Claims referred to herein.

~~34.~~ ~~34.~~ **Proofs of Claim.** The DIP Lender, the Pre-Petition Secured Lender, and the Senior Subordinated Noteholders shall not be required to file proofs of claim in the Chapter 11 Case for any claim allowed herein. Any proof of claim filed by the Pre-Petition Secured Lender, and the Senior Subordinated Noteholders shall be deemed to be in addition to (and not in lieu of) any other proof of claim that may be filed by any such persons. Any order entered by the Court in relation to the establishment of a bar date in any of the Cases shall not apply to the Pre-Petition Secured Lender, and the Senior Subordinated Noteholders.

~~34.35.~~ **Choice of Law; Jurisdiction.** The DIP Facility and the DIP Loan Documents (and the rights and obligations of the parties thereto) shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, and, to the extent applicable, the Bankruptcy Code. The Bankruptcy Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either the DIP Facility or the DIP Loan Documents.

~~35.36.~~ ~~35.~~ **Order Effective.** This Final Order shall constitute findings of fact and conclusions of law and shall be effective as of the date of the signature by the Court, and there shall be no stay of effectiveness of this Final Order.

~~36,37.~~ 36. ~~**No Requirement to Accept Title to Collateral.**~~ Neither the DIP Lender nor the Prepetition Secured Lender shall be obligated to accept title to any portion of the Prepetition Collateral or DIP Collateral in payment of the indebtedness owed to such party by the Debtor, in lieu of payment in cash or cash equivalents, nor shall any of the DIP Lender nor Prepetition Secured Lender be obligated to accept payment in cash or cash equivalents that is encumbered by any interest of any person or entity other than the DIP Lender.

~~37,38.~~ 37. ~~**Controlling Effect of Final Order.**~~ Except as expressly modified or superseded by this Final Order, the Interim Order shall continue in full force and effect notwithstanding entry of this Final Order. To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Interim Order, the Motion, any prepetition agreement or any DIP Loan Document, the provisions of this Final Order shall control.

~~Signed on November [__], 2013~~

~~Walter Shapero~~

Signed on November [__], 2013

United States Bankruptcy Judge

Walter Shapero

United States Bankruptcy Judge